

17B:27F-1, 17B:27F-3.1 to 17B:27F-3.4 et al
LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2023 **CHAPTER:** 107

NJSA: 17B:27F-1, 17B:27F-3.1 to 17B:27F-3.4 et al: Establishes new transparency standards for pharmacy benefits manager business practices.

BILL NO: A536 (Substituted for S1616 (1R))

SPONSOR(S) Freiman, Roy and others

DATE INTRODUCED: 1/11/2022

COMMITTEE: **ASSEMBLY:** Financial Institutions & Insurance
Health
Appropriations
Budget

SENATE: --

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 06/30/2023

SENATE: 06/30/2023

DATE OF APPROVAL: 7/10/2023

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (A536/2841 AcsAcaAcaAca (ACS/3R) enacted)	Yes	
A536/A2841		
INTRODUCED BILL (A536): (Includes sponsor(s) statement)	Yes	
INTRODUCED BILL (A2841): (Includes sponsor(s) statement)	Yes	
COMMITTEE STATEMENT: ASSEMBLY:	Yes	Financial Inst & Insurance Health Appropriations Budget
SENATE:	No	

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	No	
LEGISLATIVE FISCAL ESTIMATE:	Yes	07/03/2023 07/05/2023

§2
C.17B:27F-1.1
§§3,6,7,9
C.17B:27F-3.1
to 17B:27F-3.4
§8
C.17B:27F-9.1
§13
T & E and
Note to
C.45:14-82.11
§14
Note to all
sections

P.L. 2023, CHAPTER 107, *approved July 10, 2023*
Assembly Committee Substitute (*Third Reprint*) for
Assembly, Nos. 536 and 2841

1 AN ACT concerning pharmacy benefits managers ¹**[and amending**
2 **and]**,¹ supplementing P.L.2015, c.179¹, and amending various
3 parts of the statutory law¹.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to
9 read as follows:

10 1. As used in **[this act]** P.L.2015, c.179 (C.17B:27F-1 et seq.):
11 "Anticipated loss ratio" means the ratio of the present value of
12 the future benefits payments, including claim offsets after the point
13 of sale, to the present value of the future premiums of a policy form
14 over the entire period for which rates are computed to provide
15 health insurance coverage.

16 "Average wholesale price" means the average wholesale price of
17 a prescription drug determined by a national drug pricing publisher
18 selected by a carrier. The average wholesale price shall be
19 identified using the national drug code published by the National
20 Drug Code Directory within the United States Food and Drug
21 Administration.

22 "Brand-name drug" means a prescription drug marketed under a
23 proprietary name or registered trademark name, including a
24 biological product.

25 "Carrier" means an insurance company, health service
26 corporation, hospital service corporation, medical service

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted May 26, 2022.

²Assembly AAP committee amendments adopted June 22, 2023.

³Assembly ABU committee amendments adopted June 27, 2023.

1 corporation, or health maintenance organization authorized to issue
2 health benefits plans in this State.

3 ¹["Compensation" means any direct or indirect financial benefit,
4 including, but not limited to, rebates, discounts, credits, fees, grants,
5 chargebacks or other payments or benefits of any kind.]¹

6 "Contracted pharmacy" means a pharmacy that participates in the
7 network of a pharmacy benefits manager through a contract with:

- 8 a. the pharmacy benefits manager directly;
9 b. a pharmacy services administration organization; or
10 c. a pharmacy group purchasing organization.

11 "Cost-sharing amount" means the amount paid by a covered
12 person as required under the covered person's health benefits plan
13 for a prescription drug at the point of sale.

14 "Covered person" means a person on whose behalf a carrier or
15 other entity, who is the sponsor of the health benefits plan, is
16 obligated to pay benefits pursuant to a health benefits plan.

17 "Department" means the Department of Banking and Insurance.

18 "Drug" means a drug or device as defined in R.S.24:1-1.

19 "Health benefits plan" means a benefits plan which pays hospital
20 or medical expense benefits for covered services, or prescription
21 drug benefits for covered services, and is delivered or issued for
22 delivery in this State by or through a carrier or any other sponsor.
23 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits
24 plan shall not include the following plans, policies or contracts:
25 accident only, credit disability, long-term care, Medicare
26 supplement coverage; TRICARE supplement coverage, coverage
27 for Medicare services pursuant to a contract with the United States
28 government, the State Medicaid program established pursuant to
29 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a
30 worker's compensation or similar law, the State Health Benefits
31 Program, the School Employees' Health Benefits Program, or a self-
32 insured health benefits plan governed by the provisions of the
33 federal "Employee Retirement Income Security Act of 1974," 29
34 U.S.C. s.1001 et seq., coverage under a policy of private passenger
35 automobile insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1
36 et seq.), or hospital confinement indemnity coverage.

37 ¹["Mail order pharmacy" means a pharmacy, the principle
38 business of which is to receive a prescription by mail, fax or
39 electronic submission, and to dispense medication to a covered
40 person using the United States Postal Service or other common or
41 contract carrier service and that provides consultation with patients
42 electronically rather than in person.]¹

43 "Maximum allowable cost" means the maximum amount a health
44 insurer will pay for a generic drug or brand-name drug that has at
45 least one generic alternative available.

46 "Network pharmacy" means a licensed retail pharmacy or other
47 pharmacy provider that contracts with a pharmacy benefits manager

1 ¹either directly or by and through a contract with a pharmacy
2 services administrative organization¹.

3 "Pharmacy" means any place in the State, either physical or
4 electronic, where drugs are dispensed or pharmaceutical care is
5 provided by a licensed pharmacist, but shall not include a medical
6 office under the control of a licensed physician.

7 "Pharmacy benefits manager" means a corporation, business, or
8 other entity, or unit within a corporation, business, or other entity,
9 that, pursuant to a contract or under an employment relationship
10 with a carrier, a self-insurance plan or other third-party payer, either
11 directly or through an intermediary, administers prescription drug
12 benefits on behalf of a purchaser.

13 "Pharmacy benefits manager compensation" means the
14 difference between: (1) the ¹[value] amount¹ of payments made by
15 a carrier of a health benefits plan to its pharmacy benefits manager;
16 and (2) the value of payments made by the pharmacy benefits
17 manager to dispensing pharmacists for the provision of prescription
18 drugs or pharmacy services with regard to pharmacy benefits
19 covered by the health benefits plan.

20 "Pharmacy benefits management services" means the provision
21 of any of the following services on behalf of a purchaser: the
22 procurement of prescription drugs at a negotiated rate for
23 dispensation within this State; the processing of prescription drug
24 claims; or the administration of payments related to prescription
25 drug claims.

26 ¹"Pharmacy services administrative organization" means an
27 entity operating within the State that contracts with independent
28 pharmacies to conduct business on their behalf with third-party
29 payers.¹

30 "Prescription" means a prescription as defined in section 5 of
31 P.L.1977, c.240 (C.24:6E-4).

32 "Prescription drug benefits" means the benefits provided for
33 prescription drugs and pharmacy services for covered services
34 under a health benefits plan contract.

35 "Purchaser" means any sponsor of a health benefits plan who
36 enters into an agreement with a pharmacy benefits management
37 company for the provision of pharmacy benefits management
38 services to covered persons.

39 (cf: P.L.2019, c.274, s.2)

40

41 2. (New section) a. A corporation, business, or other entity
42 shall not act as a pharmacy benefits manager ²without first
43 obtaining a license from the department² ¹or ²as a² pharmacy
44 services administrative organization¹ ²[in this State without first
45 obtaining a license] without first obtaining registration² from the
46 department. An applicant for licensure ²or registration² ¹[as a

1 pharmacy benefits manager¹ shall provide to the department
2 information that includes, but is not limited to, the following:

- 3 (1) the name of the applicant;
4 (2) the address and telephone number of the applicant;
5 (3) the name and address of the applicant's agent for service of
6 process in the State;

7 (4) the name and address of each person ¹beneficially
8 interested¹ owning 10 percent or greater interest¹ in the applicant;
9 ¹and¹

10 (5) the name and address of each person with management or
11 control over the applicant ¹; ²and²

12 (6) ²for pharmacy benefits managers,² the information required
13 under section 4 of P.L.1999, c.409 (C.17:48H-4)^{1 2};

14 (7) for pharmacy benefits managers, all contracts and documents
15 between pharmacies, pharmacy benefits managers, and pharmacy
16 services administrative organizations; and

17 (8) for pharmacy services administrative organizations, upon the
18 department's request, any contracts and documents between
19 pharmacies, pharmacy benefits managers, and pharmacy services
20 administrative organizations².

21 b. A license ²or registration² issued pursuant to this section
22 shall be valid for a period of three years and may be renewed at the
23 end of the three-year period. The commissioner shall establish fees
24 for a license ²or registration² issued or renewed pursuant to this
25 section.

26 c. The department may issue a ¹pharmacy benefits manager¹
27 ²pharmacy benefits manager² license to an applicant only if the
28 department is satisfied that the applicant possesses the necessary
29 organization, expertise, and financial integrity to supply the
30 services sought to be offered. ²The department shall establish, by
31 regulation, minimum standards for the issuance of a license to a
32 pharmacy benefits manager. The minimum standards established
33 pursuant to this subsection shall contain both prerequisites for the
34 issuance of a license to a pharmacy benefits manager and
35 requirements for maintenance of a license by a pharmacy benefits
36 manager and shall address, without limitation:

37 (1) conflicts of interest between pharmacy benefits managers
38 and health benefits plans;

39 (2) deceptive practices in connection with the performance of
40 pharmacy ³benefit³ benefits³ management services;

41 (3) anti-competitive practices in connection with the
42 performance of pharmacy benefits management services;

43 (4) unfair claims practices in connection with the performance
44 of pharmacy benefits management services;

45 (5) pricing models used by pharmacy ³benefit³ benefits³
46 managers both for their services and for the payment of services to
47 the pharmacy benefits manager;

1 (6) standards and practices used in the creation of pharmacy
2 networks and contracting with network pharmacies and other
3 providers, including promotion and use of independent and
4 community pharmacies and patient access and minimizing
5 excessive concentration and vertical integration of markets; and

6 (7) protection of consumers.²

7 d. The department may issue a ¹**【pharmacy benefits manager】**¹
8 license ¹to a pharmacy benefits manager ²**【or pharmacy services**
9 **administrative organization¹】**² subject to restrictions or limitations,
10 including the type of services that may be supplied or the activities
11 in which the pharmacy benefits manager ²**【¹or pharmacy services**
12 **administrative organization¹】**² may engage.

13 e. A license ²or registration² issued pursuant to this section
14 shall not be transferable.

15 f. The department may suspend, revoke or place on probation a
16 ¹**【pharmacy benefits manager license】** licensee¹ ²or registered
17 entity² if:

18 (1) the pharmacy benefits manager ¹or pharmacy services
19 administrative organization¹ has engaged in fraudulent activity ¹or
20 any activity¹ that constitutes a violation of State or federal law;

21 (2) the department has received consumer complaints that
22 justify an action under this subsection to protect the safety and
23 interests of consumers;

24 (3) the pharmacy benefits manager ¹or pharmacy services
25 administrative organization¹ fails to pay the original issuance or
26 renewal fee for the license ²or registration²; or

27 (4) the pharmacy benefits manager ¹or pharmacy services
28 administrative organization¹ fails to comply with any requirement
29 set forth in P.L. , c. (C.) (pending before the Legislature as
30 this bill).

31 g. If a corporation, business, or other entity acts as a pharmacy
32 benefits manager ¹or pharmacy services administrative
33 organization¹ without obtaining a license ²or registration² pursuant
34 to this section, the corporation, business, or other entity shall be
35 subject to ¹**【**:

36 (1) a warning notice;

37 (2) an opportunity to cure the violation within 14 days following
38 the issuance of the notice;

39 (3) a hearing before the commissioner within 70 days following
40 the issuance of the notice; and

41 (4) if the violation has not been cured pursuant to subsection a.
42 of this section, a penalty of not less than \$5,000 or more than
43 \$10,000 **】** the provisions of section 7 of P.L.2019, c.274
44 (C.17B:27F-10)¹.

45 h. ¹(1)¹ Notwithstanding the provisions of subsection a. of this
46 section, a pharmacy benefits manager ¹**【certified or licensed】** ²**【or**

1 pharmacy services administrative organization]² that applied for, or
2 received, certification or licensure¹ as an organized delivery system
3 prior to the effective date of P.L. , c. (C.) (pending before
4 the Legislature as this bill), in accordance with P.L.1999, c.409
5 (C.17:48H-1 et seq.), may continue to operate during the pendency
6 of its application submitted pursuant to this section, but no more
7 than ¹[18] ~~24~~¹ months after the effective date of this act.

8 ¹(2) A corporation, business, or other entity that acts as a
9 pharmacy benefits manager ²[or pharmacy services administrative
10 organization]², and applies for, receives, and maintains a license as
11 an organized delivery system, in accordance with P.L.1999, c.409
12 (C.17:48H-1 et seq.), shall not be required to maintain that license
13 as an organized delivery system upon the issuance of a license
14 pursuant to P.L. , c. (C.) (pending before the Legislature as
15 this bill), and during any subsequent applications for renewal of the
16 license as a pharmacy benefits manager ²[or pharmacy services
17 administrative organization]² pursuant to the requirements of
18 P.L. , c. (C.) (pending before the Legislature as this bill).

19 i. A licensee shall be subject to the following except to the
20 extent inconsistent with this act or where the commissioner
21 determines that any provisions are inappropriate as applied to a
22 pharmacy benefits manager ²[or pharmacy services administrative
23 organization]²:

24 (1) the unfair trade practices provisions of N.J.S.17B:30-1 et
25 seq.;

26 (2) the provisions of P.L.1970, c. 22 (C.17:27A-1 et seq.);

27 (3) the "Life and Health Insurers Rehabilitation and Liquidation
28 Act," P.L.1992, c.65 (C.17B:32-31 et seq.);

29 (4) investment limitations pursuant to N.J.S.17B:20-1 et seq.;
30 and

31 (5) the "Health Care Quality Act," P.L.1997, c.192 (C.26:2S-1
32 et al.).¹

33

34 3. (New section) a. A carrier shall:

35 (1) monitor all activities carried out on behalf of the carrier by a
36 pharmacy benefits manager if the carrier contracts with a pharmacy
37 benefits manager and is related to a carrier's prescription drug benefits;
38 and

39 (2) ensure that all requirements of this section are met.

40 b. A carrier that contracts with a pharmacy benefits manager to
41 perform any activities related to the carrier's prescription drug benefits
42 shall ensure that, under the contract, the pharmacy benefits manager
43 acts as the carrier's agent ¹[and owes a fiduciary duty to the carrier in
44 the pharmacy benefits manager's activities related to the carrier's
45 prescription drug benefits] in good faith and fair dealing in the
46 performance of all of its contractual duties. All funds received by the
47 pharmacy benefits manager in relation to providing pharmacy benefits

1 management services shall be used or distributed only pursuant to the
2 pharmacy benefits manager's contract with the health benefits plan or
3 carrier or applicable law; including any administrative fee or payment
4 to the pharmacy benefits manager expressly provided for in the
5 contract to compensate the pharmacy benefits manager for its services.
6 Any funds received by the pharmacy benefits manager through spread
7 pricing shall be subject to this subsection¹.

8 c. ¹~~【~~A carrier shall not enter into a contract or agreement, or
9 allow a pharmacy benefits manager or any entity acting on the carrier's
10 behalf to enter into a contract or agreement, that prohibits a pharmacy
11 from:

12 (1) providing a covered person with the option of paying the
13 pharmacy provider's cash price for the purchase of a prescription drug
14 and not filing a claim with the covered person's carrier if the cash price
15 is less than the covered person's cost-sharing amount; or

16 (2) providing information to a State or federal agency, law
17 enforcement agency, or the department when such information is
18 required by law ~~】~~ (1) A pharmacy benefits manager interacting with a
19 covered person shall have the same duty to a covered person as the
20 health benefits plan or carrier for whom it is performing pharmacy
21 benefits management services.

22 (2) A pharmacy benefits manager shall have a duty of good faith
23 and fair dealing with all parties, including but not limited to covered
24 persons and pharmacies, with whom it interacts in the performance of
25 pharmacy benefits management services¹.

26 d. A carrier or pharmacy benefits manager shall not require a
27 covered person to make a payment at the point of sale for a covered
28 prescription drug in an amount greater than ¹the lesser of¹:

29 (1) the applicable cost-sharing amount for the prescription drug;
30 ¹~~【~~²or²

31 (2) ¹the amount a covered person would pay for the prescription
32 medication if the covered person purchased the prescription
33 medication without using a health benefits plan² ~~】~~; or

34 (3) ¹the total amount the pharmacy will be reimbursed for the
35 prescription drug from the pharmacy benefits manager or carrier,
36 including the cost-sharing amount paid by a covered person ¹~~【~~,
37 whichever is less¹. ² ~~】~~.

38 e. A carrier shall provide a reasonably adequate retail pharmacy
39 network for the provision of prescription drugs for its covered persons
40 ¹~~【~~A mail order pharmacy shall not be included in determining the
41 adequacy of a retail pharmacy network ~~】~~¹.

42 ¹f. For the purposes of this section, “health benefits plan” shall
43 include the State Health Benefits Plan, the School Employees’ Health
44 Benefits Plan, the State Medicaid program established pursuant to
45 P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured health benefits
46 plan governed by the provisions of the federal “Employee Retirement
47 Income Security Act of 1974,” 29 U.S.C., ss.1001 et seq.¹

1 4. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to
2 read as follows:

3 2. Upon execution or renewal of each contract, or at such a
4 time when there is any material change in the term of the contract, a
5 pharmacy benefits manager shall, with respect to contracts between
6 a pharmacy benefits manager and a pharmacy services
7 administrative organization, or between a pharmacy benefits
8 manager and a contracted pharmacy:

9 a. (1) include in the contract the sources utilized to determine
10 multiple source generic drug pricing, brand drug pricing, and the
11 wholesaler in the State of New Jersey where pharmacies may
12 acquire the product, including, but not limited to, the brand
13 effective rate, generic effective rate, dispensing fee effective rate,
14 maximum allowable cost or any other pricing formula for pharmacy
15 reimbursement;

16 (2) update that pricing information every seven calendar days;
17 and

18 (3) establish a reasonable process by which contracted
19 pharmacies have a method to access relevant maximum allowable
20 cost pricing lists, brand effective rate, generic effective rate, and
21 dispensing fee effective rate, or any other pricing formulas for
22 pharmacy reimbursement **]; and**.

23 b. Additionally, a pharmacy benefits manager shall:

24 (1) **【Maintain】** maintain a procedure to eliminate drugs from the
25 list of drugs subject to multiple source generic drug pricing and
26 brand drug pricing, or modify maximum allowable cost rates, brand
27 effective rate, generic effective rate, dispensing fee effective rate or
28 any other applicable pricing formula in a timely fashion and make
29 that procedure easily accessible to the pharmacy services
30 administrative organizations or the pharmacies that they are
31 contractually obligated with to provide that information according
32 to the requirements of this section; and

33 (2) provide ¹【a reasonable administrative appeal procedure,
34 including a right to appeal in accordance with section 4 of PL.2015,
35 c.179 (C.17B:27F-4), to allow pharmacies with which】 an internal
36 appeal mechanism to resolve any dispute raised by a carrier or
37 pharmacy, regardless of whether¹ the carrier or pharmacy benefits
38 manager has a contract to challenge maximum allowable costs for a
39 specified drug. ¹Any dispute regarding the determination of an
40 internal appeal conducted pursuant to this subsection may be
41 referred to arbitration. The Commissioner of Banking and
42 Insurance shall contract with a nationally recognized, independent
43 organization that specializes in arbitration to conduct the arbitration
44 proceedings.¹

45 (cf: P.L.2019, c.274, s.3)

46
47 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to
48 read as follows:

1 3. a. **【**In order to place a particular prescription drug on a
2 multiple source generic list, the pharmacy benefits manager shall, at
3 a minimum, ensure that:**】** A carrier, or a pharmacy benefits manager
4 under contract with a carrier, shall use a single maximum allowable
5 cost list to establish the maximum amount to be paid by a health
6 benefits plan to a pharmacy provider for a generic drug or a brand-
7 name drug that has at least one generic equivalent available. A
8 carrier, or a pharmacy benefits manager under contract with a
9 carrier, shall use the same maximum allowable cost list for each
10 pharmacy provider.

11 b. A maximum allowable cost may be set for a prescription
12 drug, or a prescription drug may be allowed to continue on a
13 maximum allowable cost list, only if:

14 (1) The drug is listed as therapeutically and pharmaceutically
15 equivalent or "A," "B," "NR," or "NA" rated in the Food and Drug
16 Administration's most recent version of the Approved Drug
17 Products with Therapeutic Equivalence Evaluations, commonly
18 known as the "Orange Book;" and

19 (2) The drug is available for purchase without limitations by all
20 pharmacies in the State from national or regional wholesalers and is
21 not obsolete or temporarily unavailable.

22 **【b.】** c. A pharmacy benefits manager shall not penalize a
23 pharmacist or pharmacy on audit if the pharmacist or pharmacy
24 performs a generic substitution pursuant to the "Prescription Drug
25 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-1 et
26 seq.).

27 d. A carrier, or a pharmacy benefits manager under contract
28 with a carrier, shall use the average wholesale price to establish the
29 maximum payment for a brand-name drug for which a generic
30 equivalent is not available or a prescription drug not included on a
31 maximum allowable cost list. In order to use the average wholesale
32 price of a brand-name drug or prescription drug not included on a
33 maximum allowable cost list, a carrier, or a pharmacy benefits
34 manager under contract with a carrier, shall use only one national
35 drug pricing source during a calendar year, unless the original drug
36 pricing source is no longer available. A carrier, or a pharmacy
37 benefits manager under contract with a carrier, shall use the same
38 national drug pricing source for each pharmacy provider and
39 identify on its publicly accessible website the name of the national
40 drug pricing source used to determine the average wholesale price
41 of a prescription drug not included on the maximum allowable cost
42 list.

43 e. The amount paid by a carrier or a carrier's pharmacy benefits
44 manager to a pharmacy provider under contract with the carrier or
45 the carrier's pharmacy benefits manager for dispensing a
46 prescription drug shall be the ingredient cost plus the dispensing fee
47 less any cost-sharing amount paid by a covered person.

1 The ingredient cost shall not exceed the maximum allowable cost
2 or average wholesale price, as applicable, and shall be disclosed by
3 a carrier's pharmacy benefits manager to the carrier.

4 Only the pharmacy provider that dispensed the prescription drug
5 shall retain the payment described in this subsection.

6 (cf: P.L.2015, c. 179, s.3)

7
8 6. (New section) a. Compensation remitted by or on behalf of
9 a pharmaceutical manufacturer, developer or labeler, directly or
10 indirectly, to a carrier or to a pharmacy benefits manager under
11 contract with a carrier related to prescription drug benefits shall
12 be¹ []:

13 (1)]^{1 2}:

14 (1) ²remitted directly to the covered person at the point of sale
15 to reduce the out-of-pocket cost to the covered person associated
16 with a particular prescription drug¹ []; or

17 (2) remitted to, and retained by, the carrier. Compensation
18 remitted to the carrier shall be applied by the carrier in its plan
19 design and in future plan years to offset the premium for covered
20 persons]^{1 2}; or

21 (2) remitted to, and retained by, the carrier. Compensation
22 remitted to the carrier shall be applied by the carrier in its plan
23 design and in future plan years to offset the premium for covered
24 persons².

25 b. Beginning on March 1 next following the effective date
26 of P.L. , c. (C.) (pending before the Legislature as this
27 bill), and annually thereafter, a carrier shall file with the department
28 a report explaining how the carrier has complied with the provisions
29 of this section. The report shall be written in a manner and form
30 determined by the department.

31 ¹c. Nothing in this section shall preclude a carrier or pharmacy
32 benefits manager under contract with a carrier from implementing a
33 program designed to lower a covered person's out-of-pocket cost or
34 decreasing a covered person's out-of-pocket cost by an amount
35 greater than that required under subsection a. of this section.

36 d. As used in this section, "compensation" means any direct or
37 indirect financial benefit, including, but not limited to, rebates,
38 discounts, credits, fees, grants, chargebacks or other payments or
39 benefits of any kind³, that is attributed to, directly or indirectly, the
40 utilization of a health benefits plan or enrollment in a health
41 benefits plan, regardless of how the benefits are otherwise
42 characterized by a pharmacy benefits manager and relevant third
43 parties^{3 1} .

44
45 7. (New section) a. A carrier, or a pharmacy benefits manager
46 under contract with a carrier, shall establish a pharmacy and

1 therapeutics committee responsible for managing the formulary
2 system.

3 b. A carrier, or a pharmacy benefits manager under contract
4 with a carrier, shall not allow a person with a conflict of interest to
5 be a member of its pharmacy and therapeutics committee. ¹ [A
6 person shall not serve as a member of a pharmacy and therapeutics
7 committee if the person:

8 (1) is employed, or was employed within the preceding year, by
9 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
10 distributor; or

11 (2) receives compensation, or received compensation within the
12 preceding year, from a pharmaceutical manufacturer, developer,
13 labeler, wholesaler, or distributor.] A carrier, or a pharmacy
14 benefits manager under contract with a carrier, shall require that its
15 pharmacy and therapeutics committee meet the requirements for
16 conflict of interest as set by the Centers for Medicare and Medicaid
17 Services or meets the accreditation standards of the National
18 Committee for Quality Assurance or another independent
19 accrediting organization.¹

20

21 8. (New section) a. A carrier ¹or health benefits plan, including
22 the State Health Benefits Program, the School Employees' Health
23 Benefits Program, the State Medicaid program, or a self-insured health
24 benefits plan governed by the provisions of the federal ² [Employee]
25 “Employee² Retirement Income Security Act of 1974,” 29 U.S.C.
26 s.1001 et seq.,¹ shall ¹ [maintain and]¹ have the ability to access all
27 data related to the administration and provision of prescription drug
28 benefits administered by a pharmacy benefits manager under the
29 health benefits plan ¹ [of the carrier]¹, including, but not limited to:

30 (1) the names, addresses, member identification numbers,
31 protected health information and other personal information of covered
32 persons; and

33 (2) any contracts, documentation, and records, including
34 transaction and pricing data and post point-of-sale information, related
35 to the dispensing of prescription drugs to covered persons under the
36 health benefits plan.

37 b. A sale or transaction involving the transfer of any records,
38 information or data described in subsection a. of this section must
39 comply with the federal Health Insurance Portability and
40 Accountability Act of 1996, Pub. L. No. 104-191, and the federal
41 Health Information Technology for Economic and Clinical Health Act,
42 Pub. L. No. 111-5, and any regulations adopted pursuant to those laws.

43 c. A carrier ¹or health benefits plan, including the State Health
44 Benefits ² [Plan] Program², the School Employees' Health Benefits
45 ² [Plan] Program², the State Medicaid program, or a self-insured
46 health benefits plan¹ may audit all transaction records related to the
47 dispensing of prescription drugs to covered persons under a health

1 benefits plan. A carrier ¹or health benefits plan, including the State
2 Health Benefits ²[Plan] Program², the School Employees' Health
3 Benefits ²[Plan] Program², the State Medicaid program, or a self-
4 insured health benefits plan¹ may conduct audits at a location of its
5 choosing and with an auditor of its choosing.

6 d. A carrier shall maintain all records, information and data
7 described in subsection a. of this section and all audit records
8 described in subsection c. of this section for a period of no less than
9 five years.

10 e. ¹(1)¹ Upon request, a carrier ¹or pharmacy benefits manager¹
11 shall provide to the department any records, contracts, documents or
12 data held by the carrier or the carrier's pharmacy benefits manager for
13 inspection, examination or audit purposes. ²The department shall keep
14 confidential all information submitted pursuant to this section and
15 shall protect it from public disclosure.² ¹Any records, documents, or
16 data provided to the department pursuant to this subsection shall not be
17 considered a government record under P.L.1963, c.73 (C.47:1A-1 et
18 seq.) or the common law concerning access to government records.

19 (2) A person who is authorized to access information submitted by
20 a pharmacy benefits manager to the ²[division] department² who
21 ²[knowingly] willfully² discloses such information to any person or
22 entity who is not authorized to access the information shall be ²[guilty
23 of a crime of the fourth degree and shall be]² subject to a civil penalty
24 in an amount not to exceed ²[\$10,000] \$500².

25 A civil penalty imposed under this subsection shall be collected by
26 the ²[director] commissioner² pursuant to the "Penalty Enforcement
27 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).¹

28 ²f. A pharmacy benefits manager shall disclose in writing to a
29 carrier or health benefits plan any activity, policy, practice, contract or
30 arrangement of the pharmacy benefits manager that directly or
31 indirectly presents any conflict of interest with the pharmacy benefits
32 manager's relationship with or obligation to the carrier or plan.²

33
34 9. (New section) a. If a carrier uses a pharmacy benefits
35 manager to administer or manage the prescription drug benefits of
36 covered persons, any pharmacy benefits manager compensation, for
37 purposes of calculating a carrier's anticipated loss ratio or any loss
38 ratio calculated as part of any applicable medical loss ratio filing or
39 rate filing, shall:

40 (1) constitute an administrative cost incurred by the carrier in
41 connection with a health benefits plan; and

42 (2) not constitute a benefit provided under a health benefits
43 plan. A carrier shall claim only the amounts paid by the pharmacy
44 benefits manager to a pharmacy or pharmacist as an incurred claim.

45 b. Any rate filing submitted by a carrier with respect to a health
46 benefits plan that provides coverage for prescription drugs or

1 pharmacy services, that is administered or managed by a pharmacy
2 benefits manager, shall include:

3 (1) a memorandum prepared by a qualified actuary describing
4 the calculation of the pharmacy benefits manager compensation;
5 and

6 (2) any records and supporting information as the department
7 reasonably determines is necessary to confirm the calculation of the
8 pharmacy benefits manager compensation.

9 c. Upon request, a carrier shall provide any records to the
10 department that relate to the calculation of the pharmacy benefits
11 manager and pharmacy services administrative organization¹
12 compensation.

13 d. A pharmacy benefits manager and pharmacy services
14 administrative organization¹ shall provide any necessary
15 documentation requested by a carrier that relates to pharmacy
16 benefits manager compensation in order to comply with the
17 requirements of this section.

18

19 ¹10. Section 1 of P.L.2019, c.257 (C.17B:27F-6) is amended to
20 read as follows:

21 1. a. A pharmacy benefits manager, in connection with any
22 contract or arrangement with a private health insurer, prescription
23 benefit plan, or the State Health Benefits Program or School
24 Employees' Health Benefits Program, shall not require a covered
25 person to make a payment at the point of sale for any amount for a
26 deductible, coinsurance payment, or a copayment for a prescription
27 drug benefit in an amount that exceeds the amount **the covered**
28 **person would pay for the prescription drug if the covered person**
29 **purchased the prescription drug without using a health benefits**
30 **plan** permitted pursuant to subsection d. of section 3 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill).

32 b. A pharmacy benefits manager shall not prohibit a network
33 pharmacy from **disclosing**, and shall not apply a penalty or any
34 other type of disincentive to a network pharmacy **that discloses,**
35 for:

36 (1) disclosing to a covered person lower cost prescription drug
37 options, including those that are available to the covered person if
38 the covered person purchases the prescription drug without using
39 health insurance coverage;

40 (2) providing a covered person with the option of paying the
41 pharmacy provider's cash price for the purchase of a prescription
42 drug and not filing a claim with the covered person's health benefits
43 plan if the cash price is less than the covered person's cost-sharing
44 amount; or

45 (3) providing information to a State or federal agency, law
46 enforcement agency, or the department when such information is
47 required by law.

1 c. Any provision of a contract that conflicts with the provisions
2 of subsection b. of this section shall be void and unenforceable.

3 d. A violation of this section shall be an unlawful practice and
4 a violation of P.L.1960, c.39 (C.56:8-1 et seq.), and shall also be
5 subject to any enforcement action that the Commissioner of
6 Banking and Insurance is authorized to take pursuant to section 5 of
7 P.L.2015, c.179 (C.17B:27F-5).¹
8 (cf: P.L.2019, c.257, s.1)
9

10 ¹**[10.] 11.**¹ Section 6 of P.L.2019, c.274 (C.17B:27F-9) is
11 amended to read as follows:

12 6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-1 et
13 seq.) shall apply to all pharmacy benefits managers operating in the
14 State of New Jersey [, except for any]. Requirements imposed on
15 carriers by the provisions of P.L.2015, c.179 (C.17B:27F-1 et seq.)
16 shall not apply to an agreement by a pharmacy benefits manager to
17 administer prescription drug benefits on behalf of the State Health
18 Benefits ²**[Plan] Program²**, the School Employees Health Benefits
19 ²**[Plan] Program²**, the State Medicaid program established pursuant to
20 P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured health benefits
21 plan governed by the provisions of the federal “Employee Retirement
22 Income Security Act of 1974,” 29 U.S.C., ss.1001 et seq.
23 (cf: P.L.2019, c.274, s.6)
24

25 ²12. Section 7 of P.L.2019, c.274 (C.17B:27F-10) is amended to
26 read as follows:

27 7. a. A pharmacy benefits manager that violates any provision
28 of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be subject to a
29 penalty in an amount not exceeding the greater of:

30 **[**a. a warning notice;

31 b. an opportunity to cure the violation within 14 days following
32 the issuance of the notice;

33 c. a hearing before the commissioner within 70 days following
34 the issuance of the notice; and

35 d. if the violation has not been cured pursuant to subsection b.
36 of this section,**]**

37 (1) a penalty of **[not less than] \$5,000 [or more than] for a first**
38 violation and a penalty of \$10,000 for each subsequent violation; or

39 (2) the aggregate gross receipts attributable to all violations.

40 b. In addition to any other penalties permitted by law, the
41 Commissioner of Banking and Insurance may require a pharmacy
42 benefits manager that violates the provisions of P.L.2015, c.179
43 (C.17B:27F-1 et seq.) to make restitution and pay compensatory
44 damages, in an amount to be determined by the commissioner, to
45 any person injured by the violation.²

46 (cf: P.L.2019, c.274, s.7)

1 ²13. (New section) The Drug Affordability Council, established
2 pursuant to P.L. , c. (C.) (pending before the Legislature as
3 Senate Bill No. 1615 or Assembly Bill No. 2840 of 2022-2023), shall,
4 in the first report issued by the council, examine the existing
5 prescription drug rebate system and evaluate measures and reforms
6 that could reduce the cost of prescription drugs, including, but not
7 limited to, the elimination of rebates and the establishment of rebate
8 transparency provisions.²

9
10 ¹~~11.~~ ²~~12.~~ ¹14.² This act shall take effect on the first day of the
11 ²~~seventh~~ ²18th month next following the date of enactment, ²and
12 shall apply to contracts and agreements entered into, renewed,
13 modified, or amended on or after the effective date.² but the
14 Commissioner of ²~~the~~² Banking and Insurance may take such
15 anticipatory administrative action in advance thereof as shall be
16 necessary for the implementation of the act.

17

18

19

20

21 Establishes new transparency standards for pharmacy benefits
22 manager business practices.

ASSEMBLY, No. 2841

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 28, 2022

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Co-Sponsored by:

Assemblyman Benson, Assemblywomen Reynolds-Jackson and McKnight

SYNOPSIS

Establishes new transparency standards for pharmacy benefits manager business practices.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/28/2022)

1 AN ACT concerning pharmacy benefits managers and amending and
2 supplementing P.L.2015, c.179.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to
8 read as follows:

9 1. As used in **[this act]** P.L.2015, c.179 (C.17B:27F-1 et seq.):

10 "Anticipated loss ratio" means the ratio of the present value of
11 the future benefits payments, including claim offsets after the point
12 of sale, to the present value of the future premiums of a policy form
13 over the entire period for which rates are computed to provide
14 health insurance coverage.

15 "Average wholesale price" means the average wholesale price of
16 a prescription drug determined by a national drug pricing publisher
17 selected by a carrier. The average wholesale price shall be
18 identified using the national drug code published by the National
19 Drug Code Directory within the United States Food and Drug
20 Administration.

21 "Brand-name drug" means a prescription drug marketed under a
22 proprietary name or registered trademark name, including a
23 biological product.

24 "Carrier" means an insurance company, health service
25 corporation, hospital service corporation, medical service
26 corporation, or health maintenance organization authorized to issue
27 health benefits plans in this State.

28 "Compensation" means any direct or indirect financial benefit,
29 including, but not limited to, rebates, discounts, credits, fees, grants,
30 chargebacks or other payments or benefits of any kind.

31 "Contracted pharmacy" means a pharmacy that participates in the
32 network of a pharmacy benefits manager through a contract with:

- 33 a. the pharmacy benefits manager directly;
34 b. a pharmacy services administration organization; or
35 c. a pharmacy group purchasing organization.

36 "Cost-sharing amount" means the amount paid by a covered
37 person as required under the covered person's health benefits plan
38 for a prescription drug at the point of sale.

39 "Covered person" means a person on whose behalf a carrier or
40 other entity, who is the sponsor of the health benefits plan, is
41 obligated to pay benefits pursuant to a health benefits plan.

42 "Department" means the Department of Banking and Insurance.

43 "Drug" means a drug or device as defined in R.S.24:1-1.

44 "Health benefits plan" means a benefits plan which pays hospital
45 or medical expense benefits for covered services, or prescription

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 drug benefits for covered services, and is delivered or issued for
2 delivery in this State by or through a carrier or any other sponsor.
3 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits
4 plan shall not include the following plans, policies or contracts:
5 accident only, credit disability, long-term care, Medicare
6 supplement coverage; TRICARE supplement coverage, coverage
7 for Medicare services pursuant to a contract with the United States
8 government, the State Medicaid program established pursuant to
9 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a
10 worker's compensation or similar law, the State Health Benefits
11 Program, the School Employees' Health Benefits Program, or a self-
12 insured health benefits plan governed by the provisions of the
13 federal "Employee Retirement Income Security Act of 1974," 29
14 U.S.C. s.1001 et seq., coverage under a policy of private passenger
15 automobile insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1
16 et seq.), or hospital confinement indemnity coverage.

17 "Mail order pharmacy" means a pharmacy, the principle business
18 of which is to receive a prescription by mail, fax or electronic
19 submission, and to dispense medication to a covered person using
20 the United States Postal Service or other common or contract carrier
21 service and that provides consultation with patients electronically
22 rather than in person.

23 "Maximum allowable cost" means the maximum amount a health
24 insurer will pay for a generic drug or brand-name drug that has at
25 least one generic alternative available.

26 "Network pharmacy" means a licensed retail pharmacy or other
27 pharmacy provider that contracts with a pharmacy benefits
28 manager.

29 "Pharmacy" means any place in the State, either physical or
30 electronic, where drugs are dispensed or pharmaceutical care is
31 provided by a licensed pharmacist, but shall not include a medical
32 office under the control of a licensed physician.

33 "Pharmacy benefits manager" means a corporation, business, or
34 other entity, or unit within a corporation, business, or other entity,
35 that, pursuant to a contract or under an employment relationship
36 with a carrier, a self-insurance plan or other third-party payer, either
37 directly or through an intermediary, administers prescription drug
38 benefits on behalf of a purchaser.

39 "Pharmacy benefits manager compensation" means the
40 difference between: (1) the value of payments made by a carrier of
41 a health benefits plan to its pharmacy benefits manager; and (2) the
42 value of payments made by the pharmacy benefits manager to
43 dispensing pharmacists for the provision of prescription drugs or
44 pharmacy services with regard to pharmacy benefits covered by the
45 health benefits plan.

46 "Pharmacy benefits management services" means the provision
47 of any of the following services on behalf of a purchaser: the
48 procurement of prescription drugs at a negotiated rate for

1 dispensation within this State; the processing of prescription drug
2 claims; or the administration of payments related to prescription
3 drug claims.

4 "Prescription" means a prescription as defined in section 5 of
5 P.L.1977, c.240 (C.24:6E-4).

6 "Prescription drug benefits" means the benefits provided for
7 prescription drugs and pharmacy services for covered services
8 under a health benefits plan contract.

9 "Purchaser" means any sponsor of a health benefits plan who
10 enters into an agreement with a pharmacy benefits management
11 company for the provision of pharmacy benefits management
12 services to covered persons.

13 (cf: P.L.2019, c.274, s.2)

14

15 2. (New section) a. A corporation, business, or other entity
16 shall not act as a pharmacy benefits manager in this State without
17 first obtaining a license from the department. An applicant for
18 licensure as a pharmacy benefits manager shall provide to the
19 department information that includes, but is not limited to, the
20 following:

21 (1) the name of the applicant;

22 (2) the address and telephone number of the applicant;

23 (3) the name and address of the applicant's agent for service of
24 process in the State;

25 (4) the name and address of each person beneficially interested
26 in the applicant; and

27 (5) the name and address of each person with management or
28 control over the applicant.

29 b. A license issued pursuant to this section shall be valid for a
30 period of three years and may be renewed at the end of the three-
31 year period. The commissioner shall establish fees for a license
32 issued or renewed pursuant to this section.

33 c. The department may issue a pharmacy benefits manager
34 license to an applicant only if the department is satisfied that the
35 applicant possesses the necessary organization, expertise, and
36 financial integrity to supply the services sought to be offered.

37 d. The department may issue a pharmacy benefits manager
38 license subject to restrictions or limitations, including the type of
39 services that may be supplied or the activities in which the
40 pharmacy benefits manager may engage.

41 e. A license issued pursuant to this section shall not be
42 transferable.

43 f. The department may suspend, revoke or place on probation a
44 pharmacy benefits manager license if:

45 (1) the pharmacy benefits manager has engaged in fraudulent
46 activity that constitutes a violation of State or federal law;

1 (2) the department has received consumer complaints that
2 justify an action under this subsection to protect the safety and
3 interests of consumers;

4 (3) the pharmacy benefits manager fails to pay the original
5 issuance or renewal fee for the license; or

6 (4) the pharmacy benefits manager fails to comply with any
7 requirement set forth in P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9 g. If a corporation, business, or other entity acts as a pharmacy
10 benefits manager without obtaining a license pursuant to this
11 section, the corporation, business, or other entity shall be subject to:

12 (1) a warning notice;

13 (2) an opportunity to cure the violation within 14 days following
14 the issuance of the notice;

15 (3) a hearing before the commissioner within 70 days following
16 the issuance of the notice; and

17 (4) if the violation has not been cured pursuant to subsection a.
18 of this section, a penalty of not less than \$5,000 or more than
19 \$10,000.

20 h. Notwithstanding the provisions of subsection a. of this
21 section, a pharmacy benefits manager certified or licensed as an
22 organized delivery system prior to the effective date of P.L. , c.
23 (C.) (pending before the Legislature as this bill), in accordance
24 with P.L.1999, c.409 (C.17:48H-1 et seq.), may continue to operate
25 during the pendency of its application submitted pursuant to this
26 section, but no more than 18 months after the effective date of this
27 act.

28

29 3. (New section) a. A carrier shall:

30 (1) monitor all activities carried out on behalf of the carrier by a
31 pharmacy benefits manager if the carrier contracts with a pharmacy
32 benefits manager and is related to a carrier's prescription drug
33 benefits; and

34 (2) ensure that all requirements of this section are met.

35 b. A carrier that contracts with a pharmacy benefits manager to
36 perform any activities related to the carrier's prescription drug
37 benefits shall ensure that, under the contract, the pharmacy benefits
38 manager acts as the carrier's agent and owes a fiduciary duty to the
39 carrier in the pharmacy benefits manager's activities related to the
40 carrier's prescription drug benefits.

41 c. A carrier shall not enter into a contract or agreement, or
42 allow a pharmacy benefits manager or any entity acting on the
43 carrier's behalf to enter into a contract or agreement, that prohibits a
44 pharmacy from:

45 (1) providing a covered person with the option of paying the
46 pharmacy provider's cash price for the purchase of a prescription
47 drug and not filing a claim with the covered person's carrier if the
48 cash price is less than the covered person's cost-sharing amount; or

1 (2) providing information to a State or federal agency, law
2 enforcement agency, or the department when such information is
3 required by law.

4 d. A carrier or pharmacy benefits manager shall not require a
5 covered person to make a payment at the point of sale for a covered
6 prescription drug in an amount greater than:

7 (1) the applicable cost-sharing amount for the prescription drug;
8 or

9 (2) the total amount the pharmacy will be reimbursed for the
10 prescription drug from the pharmacy benefits manager or carrier,
11 including the cost-sharing amount paid by a covered person,
12 whichever is less.

13 e. A carrier shall provide a reasonably adequate retail
14 pharmacy network for the provision of prescription drugs for its
15 covered persons. A mail order pharmacy shall not be included in
16 determining the adequacy of a retail pharmacy network.

17

18 4. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to
19 read as follows:

20 2. Upon execution or renewal of each contract, or at such a
21 time when there is any material change in the term of the contract, a
22 pharmacy benefits manager shall, with respect to contracts between
23 a pharmacy benefits manager and a pharmacy services
24 administrative organization, or between a pharmacy benefits
25 manager and a contracted pharmacy:

26 a. (1) include in the contract the sources utilized to determine
27 multiple source generic drug pricing, brand drug pricing, and the
28 wholesaler in the State of New Jersey where pharmacies may
29 acquire the product, including, but not limited to, the brand
30 effective rate, generic effective rate, dispensing fee effective rate,
31 maximum allowable cost or any other pricing formula for pharmacy
32 reimbursement;

33 (2) update that pricing information every seven calendar days;
34 and

35 (3) establish a reasonable process by which contracted
36 pharmacies have a method to access relevant maximum allowable
37 cost pricing lists, brand effective rate, generic effective rate, and
38 dispensing fee effective rate, or any other pricing formulas for
39 pharmacy reimbursement **]; and**].

40 b. Additionally, a pharmacy benefits manager shall:

41 (1) **【Maintain】** maintain a procedure to eliminate drugs from the
42 list of drugs subject to multiple source generic drug pricing and
43 brand drug pricing, or modify maximum allowable cost rates, brand
44 effective rate, generic effective rate, dispensing fee effective rate or
45 any other applicable pricing formula in a timely fashion and make
46 that procedure easily accessible to the pharmacy services
47 administrative organizations or the pharmacies that they are

1 contractually obligated with to provide that information according
2 to the requirements of this section; and

3 (2) provide a reasonable administrative appeal procedure,
4 including a right to appeal in accordance with section 4 of PL.2015,
5 c.179 (C.17B:27F-4), to allow pharmacies with which the carrier or
6 pharmacy benefits manager has a contract to challenge maximum
7 allowable costs for a specified drug.

8 (cf: P.L.2019, c.274, s.3)

9

10 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to
11 read as follows:

12 3. a. **【**In order to place a particular prescription drug on a
13 multiple source generic list, the pharmacy benefits manager shall, at
14 a minimum, ensure that:**】** A carrier, or a pharmacy benefits manager
15 under contract with a carrier, shall use a single maximum allowable
16 cost list to establish the maximum amount to be paid by a health
17 benefits plan to a pharmacy provider for a generic drug or a brand-
18 name drug that has at least one generic equivalent available. A
19 carrier, or a pharmacy benefits manager under contract with a
20 carrier, shall use the same maximum allowable cost list for each
21 pharmacy provider.

22 b. A maximum allowable cost may be set for a prescription
23 drug, or a prescription drug may be allowed to continue on a
24 maximum allowable cost list, only if:

25 (1) The drug is listed as therapeutically and pharmaceutically
26 equivalent or "A," "B," "NR," or "NA" rated in the Food and Drug
27 Administration's most recent version of the Approved Drug
28 Products with Therapeutic Equivalence Evaluations, commonly
29 known as the "Orange Book;" and

30 (2) The drug is available for purchase without limitations by all
31 pharmacies in the State from national or regional wholesalers and is
32 not obsolete or temporarily unavailable.

33 **【b.】** c. A pharmacy benefits manager shall not penalize a
34 pharmacist or pharmacy on audit if the pharmacist or pharmacy
35 performs a generic substitution pursuant to the "Prescription Drug
36 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-1 et
37 seq.).

38 d. A carrier, or a pharmacy benefits manager under contract
39 with a carrier, shall use the average wholesale price to establish the
40 maximum payment for a brand-name drug for which a generic
41 equivalent is not available or a prescription drug not included on a
42 maximum allowable cost list. In order to use the average wholesale
43 price of a brand-name drug or prescription drug not included on a
44 maximum allowable cost list, a carrier, or a pharmacy benefits
45 manager under contract with a carrier, shall use only one national
46 drug pricing source during a calendar year, unless the original drug
47 pricing source is no longer available. A carrier, or a pharmacy
48 benefits manager under contract with a carrier, shall use the same

1 national drug pricing source for each pharmacy provider and
2 identify on its publicly accessible website the name of the national
3 drug pricing source used to determine the average wholesale price
4 of a prescription drug not included on the maximum allowable cost
5 list.

6 e. The amount paid by a carrier or a carrier's pharmacy benefits
7 manager to a pharmacy provider under contract with the carrier or
8 the carrier's pharmacy benefits manager for dispensing a
9 prescription drug shall be the ingredient cost plus the dispensing fee
10 less any cost-sharing amount paid by a covered person.

11 The ingredient cost shall not exceed the maximum allowable cost
12 or average wholesale price, as applicable, and shall be disclosed by
13 a carrier's pharmacy benefits manager to the carrier.

14 Only the pharmacy provider that dispensed the prescription drug
15 shall retain the payment described in this subsection.

16 (cf: P.L.2015, c. 179, s.3)

17

18 6. (New section) a. Compensation remitted by or on behalf of
19 a pharmaceutical manufacturer, developer or labeler, directly or
20 indirectly, to a carrier or to a pharmacy benefits manager under
21 contract with a carrier related to prescription drug benefits shall be:

22 (1) remitted directly to the covered person at the point of sale to
23 reduce the out-of-pocket cost to the covered person associated with
24 a particular prescription drug; or

25 (2) remitted to, and retained by, the carrier. Compensation
26 remitted to the carrier shall be applied by the carrier in its plan
27 design and in future plan years to offset the premium for covered
28 persons.

29 b. Beginning on March 1 next following the effective date of
30 P.L. , c. (C.) (pending before the Legislature as this bill),
31 and annually thereafter, a carrier shall file with the department a
32 report explaining how the carrier has complied with the provisions
33 of this section. The report shall be written in a manner and form
34 determined by the department.

35

36 7. (New section) a. A carrier, or a pharmacy benefits manager
37 under contract with a carrier, shall establish a pharmacy and
38 therapeutics committee responsible for managing the formulary
39 system.

40 b. A carrier, or a pharmacy benefits manager under contract
41 with a carrier, shall not allow a person with a conflict of interest to
42 be a member of its pharmacy and therapeutics committee. A person
43 shall not serve as a member of a pharmacy and therapeutics
44 committee if the person:

45 (1) is employed, or was employed within the preceding year, by
46 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
47 distributor; or

1 (2) receives compensation, or received compensation within the
2 preceding year, from a pharmaceutical manufacturer, developer,
3 labeler, wholesaler, or distributor.

4
5 8. (New section) a. A carrier shall maintain and have the
6 ability to access all data related to the administration and provision
7 of prescription drug benefits administered by a pharmacy benefits
8 manager under the health benefits plan of the carrier, including, but
9 not limited to:

10 (1) the names, addresses, member identification numbers,
11 protected health information and other personal information of
12 covered persons; and

13 (2) any contracts, documentation, and records, including
14 transaction and pricing data and post point-of-sale information,
15 related to the dispensing of prescription drugs to covered persons
16 under the health benefits plan.

17 b. A sale or transaction involving the transfer of any records,
18 information or data described in subsection a. of this section must
19 comply with the federal Health Insurance Portability and
20 Accountability Act of 1996, Pub. L. No. 104-191, and the federal
21 Health Information Technology for Economic and Clinical Health
22 Act, Pub. L. No. 111-5, and any regulations adopted pursuant to
23 those laws.

24 c. A carrier may audit all transaction records related to the
25 dispensing of prescription drugs to covered persons under a health
26 benefits plan. A carrier may conduct audits at a location of its
27 choosing and with an auditor of its choosing.

28 d. A carrier shall maintain all records, information and data
29 described in subsection a. of this section and all audit records
30 described in subsection c. of this section for a period of no less than
31 five years.

32 e. Upon request, a carrier shall provide to the department any
33 records, contracts, documents or data held by the carrier or the
34 carrier's pharmacy benefits manager for inspection, examination or
35 audit purposes.

36
37 9. (New section) a. If a carrier uses a pharmacy benefits
38 manager to administer or manage the prescription drug benefits of
39 covered persons, any pharmacy benefits manager compensation, for
40 purposes of calculating a carrier's anticipated loss ratio or any loss
41 ratio calculated as part of any applicable medical loss ratio filing or
42 rate filing, shall:

43 (1) constitute an administrative cost incurred by the carrier in
44 connection with a health benefits plan; and

45 (2) not constitute a benefit provided under a health benefits
46 plan. A carrier shall claim only the amounts paid by the pharmacy
47 benefits manager to a pharmacy or pharmacist as an incurred claim.

1 duty to the carrier. Carriers are to maintain detailed records of
2 transactions and submit annual documentation showing that any
3 compensation remitted by a manufacturer, developer, or labeler to a
4 carrier or PBM was either remitted directly to the covered person at
5 the point of sale to reduce out of pocket expenses or used to offset
6 premium costs for future plan years. Additionally, the bill mandates
7 that carriers and PBMs establish pharmacy and therapeutics
8 committees that are free from conflicts of interest and use one or
9 more formularies. For the purposes of calculating a carrier's
10 anticipated loss ratio, PBM compensation constitutes an
11 administrative cost rather than a benefit.

ASSEMBLY, No. 536

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

“New Jersey Pharmacy Benefits Manager Licensure and Regulation Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning pharmacy benefits managers and
2 supplementing Title 17B of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known as and may be cited as the “New
8 Jersey Pharmacy Benefits Manager Licensure and Regulation Act.”

9

10 2. The purpose of this act is to:

11 a. promote, preserve, and protect the public health, safety, and
12 welfare through effective regulation and licensure of pharmacy
13 benefits managers;

14 b. promote the solvency of the commercial health insurance
15 industry, the regulation of which is reserved to the states by the
16 “McCarran-Ferguson Act” (15 U.S.C. s.1011 et seq.), as well as
17 provide for consumer savings, and fairness in prescription benefits;

18 c. provide for powers and duties of the Commissioner of
19 Banking and Insurance; and

20 d. prescribe penalties and fines for violations of this act.

21

22 3. As used in this act:

23 "Claims processing services" means the administrative services
24 performed in connection with the processing and adjudicating of
25 claims relating to pharmacist services that include:

26 (1) receiving payments for pharmacist services; and

27 (2) making payments to pharmacists or pharmacies for
28 pharmacist services.

29 "Commissioner" means the Commissioner of Banking and
30 Insurance.

31 "Department" means the Department of Banking and Insurance.

32 "Other prescription drug or device services" means services other
33 than claims processing services, provided directly or indirectly,
34 whether in connection with or separate from claims processing
35 services, including without limitation:

36 (1) negotiating rebates, discounts, or other financial incentives
37 and arrangements with drug companies;

38 (2) disbursing or distributing rebates;

39 (3) managing or participating in incentive programs or
40 arrangements for pharmacist services;

41 (4) negotiating or entering into contractual arrangements with
42 pharmacists or pharmacies, or both;

43 (5) developing formularies;

44 (6) designing prescription benefit programs; and

45 (7) advertising or promoting services.

46 "Pharmacist" means an individual currently licensed by this State
47 to engage in the practice of pharmacy.

1 "Pharmacist services" means products, goods, and services, or
2 any combination of products, goods, and services, provided as a
3 part of the practice of pharmacy.

4 "Pharmacy" means any place in this State where drugs are
5 dispensed or pharmaceutical care is provided by a licensed
6 pharmacist, but shall not include a medical office under the control
7 of a licensed physician.

8 "Pharmacy benefits manager" means a person, business, or
9 entity, including a wholly or partially owned or controlled
10 subsidiary of a pharmacy benefits manager, that provides claims
11 processing services or other prescription drug or device services, or
12 both, for health benefit plans. "Pharmacy benefits manager" does
13 not include a:

14 (1) health care facility as defined in section 2 of P.L.1971, c.136
15 (C.26:2H-2);

16 (2) health care professional licensed to practice a health care
17 profession pursuant to Title 45 of the Revised Statutes; or

18 (3) consultant who only provides advice as to the selection or
19 performance of a pharmacy benefits manager.

20

21 4. a. (1) A person or organization shall not establish or
22 operate as a pharmacy benefits manager in this State for health
23 benefit plans without obtaining a license from the commissioner
24 pursuant to this act.

25 (2) The commissioner shall prescribe the application for a
26 license to operate in this State as a pharmacy benefits manager and
27 may charge application fees and renewal fees.

28 b. The commissioner shall establish the licensing, fees,
29 application, financial standards, and reporting requirements of
30 pharmacy benefits managers pursuant to this act.

31

32 5. a. In a participation contract between a pharmacy benefits
33 manager and a pharmacist or pharmacy providing prescription drug
34 coverage for health benefit plans, a pharmacy or pharmacist shall
35 not be prohibited, restricted, or penalized in any way from
36 disclosing to a covered person:

37 (1) any health care information that the pharmacy or pharmacist
38 deems appropriate regarding the nature of treatment, risks, or
39 alternatives thereto;

40 (2) the availability of alternate therapies, consultations, or tests;

41 (3) the decision of utilization reviewers or similar persons to
42 authorize or deny services;

43 (4) the process used to authorize or deny health care services or
44 benefits; or

45 (5) information on financial incentives and structures used by
46 the insurer.

- 1 b. A pharmacy or pharmacist may provide to an insured
2 information regarding the insured's total cost for pharmacist
3 services for a prescription drug.
- 4 c. A pharmacy benefits manager shall not prohibit a pharmacy
5 or pharmacist from:
6 (1) providing information regarding the total cost for pharmacist
7 services for a prescription drug; or
8 (2) selling a more affordable alternative to an insured if a more
9 affordable alternative is available.
- 10 d. A pharmacy benefits manager contract with a participating
11 pharmacist or pharmacy shall not prohibit, restrict, or limit
12 disclosure of information to the commissioner, law enforcement, or
13 state and federal governmental officials investigating or examining
14 a complaint or conducting a review of a pharmacy benefits
15 manager's compliance with the requirements of this act.
- 16
- 17 6. a. The commissioner shall enforce the provisions of this act.
- 18 b. (1) The commissioner may examine or audit the books and
19 records of a pharmacy benefits manager providing claims
20 processing services or other prescription drug or device services for
21 a health benefit plan to determine if the pharmacy benefits manager
22 is in compliance with the provisions of this act.
23 (2) The information or data acquired during an examination
24 pursuant to paragraph (1) of this subsection is:
25 (a) considered proprietary and confidential; and
26 (b) not subject to the provisions of P.L.1963, c.73 (C.47:1A-
27 1 et seq.).
- 28
- 29 7. a. The commissioner shall, in accordance with the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
31 1 et seq.), adopt any rules and regulations as the commissioner
32 deems necessary to carry out the provisions of this act.
- 33 b. Rules and regulations adopted pursuant to this act shall set
34 penalties or fines, including without limitation monetary fines,
35 suspension of licensure, and revocation of licensure for violations
36 of this act and rules and regulations adopted pursuant to this act.
- 37
- 38 8. a. This act is applicable to a contract or health benefit plan
39 that is delivered, issued, executed, or renewed in this State on or
40 after January 1, 2022.
- 41 b. A contract existing on the date of licensure of the pharmacy
42 benefits manager shall comply with the requirements of this act as a
43 condition of licensure for the pharmacy benefits manager.
- 44 c. Nothing in this act is intended or shall be construed to be in
45 conflict with existing relevant federal law.
- 46
- 47 9. This act shall take effect on the 90th day after the date of
48 enactment.

STATEMENT

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This bill provides for the licensure of pharmacy benefits managers. Under the bill, the Commissioner of Banking and Insurance is to create the application for a license to operate in this State as a pharmacy benefits manager and may charge application fees and renewal fees. The commissioner is also to establish the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefits managers.

The bill provides that, in any participation contracts between pharmacy benefits managers and pharmacists or pharmacies providing prescription drug coverage for health benefit plans, no pharmacy or pharmacist may be prohibited, restricted, or penalized in any way from disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate regarding the nature of treatment, risks, or alternatives thereto, the availability of alternate therapies, consultations, or tests, the decision of utilization reviewers or similar persons to authorize or deny services, the process that is used to authorize or deny health care services or benefits, or information on financial incentives and structures used by the insurer.

Under the bill, a pharmacy or pharmacist may provide to an insured information regarding the insured's total cost for pharmacist services for a prescription drug. A pharmacy benefits manager is not to prohibit a pharmacy or pharmacist from discussing information regarding the total cost for pharmacist services for a prescription drug or from selling a more affordable alternative to the insured if a more affordable alternative is available.

Pursuant to the bill, the commissioner may examine or audit the books and records of a pharmacy benefits manager providing claims processing services or other prescription drug or device services for a health benefit plan to determine if the pharmacy benefits manager is in compliance with the provisions of the bill. The information or data acquired during such an examination is to be considered proprietary and confidential and is not to be subject to the provisions of the open public records act.

The bill applies to contracts or health benefit plans that are delivered, issued, executed, or renewed in the State on or after January 1, 2022.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 536 and 2841

STATE OF NEW JERSEY

DATED: MARCH 14, 2022

The Assembly Financial Institutions and Insurance Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 536 and 2841.

This substitute bill sets new transparency standards for pharmacy benefits manager (PBM) business practices. Specifically, the bill concerns the licensing and reporting requirements of a carrier or a PBM. The bill requires that PBMs apply for a license with the Department of Banking and Insurance every three years and requires carriers to ensure that a PBM under contract with the carrier owes a fiduciary duty to the carrier. Carriers are to maintain detailed records of transactions and submit annual documentation showing that any compensation remitted by a manufacturer, developer, or labeler to a carrier or PBM was either remitted directly to the covered person at the point of sale to reduce out of pocket expenses or used to offset premium costs for future plan years. Additionally, the bill mandates that carriers and PBMs establish pharmacy and therapeutics committees that are free from conflicts of interest and use one or more formularies. For the purposes of calculating a carrier's anticipated loss ratio, PBM compensation constitutes an administrative cost rather than a benefit.

This Assembly Committee Substitute for Assembly Bill Nos. 536 and 2841, as adopted and reported by this committee, is identical to Senate Bill No.1616.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 536 and 2841**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2023

The Assembly Appropriations Committee reports favorably and with committee amendments the Assembly Committee Substitute for Bill Nos. 536 and 2841 (1R).

As amended, this substitute bill sets new transparency standards for pharmacy benefits manager business practices.

Specifically, the bill concerns the licensing and reporting requirements of carriers, pharmacy benefits managers, and pharmacy services administrative organizations. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administrative organizations register with the Department of Banking and Insurance every three years. The bill requires the Department of Banking and Insurance to establish, by regulation, certain minimum standards for the issuance of licenses to pharmacy benefits managers.

The bill requires carriers to monitor all activities carried out on behalf of the carrier by a pharmacy benefits manager if the carrier contracts with a pharmacy benefits manager. All funds received by the pharmacy benefits manager in relation to providing pharmacy benefits management services must be used or distributed only pursuant to the pharmacy benefits manager's contract with the health benefits plan or carrier or applicable law; including any administrative fee or payment to the pharmacy benefits manager expressly provided for in the contract to compensate the pharmacy benefits manager for its services. Any funds received by the pharmacy benefits manager through spread pricing are also subject to these requirements.

The bill provides that a pharmacy benefits manager interacting with a covered person has the same duty to a covered person as the health benefits plan or carrier for whom it is performing pharmacy benefits management services. The bill also provides that a pharmacy benefits manager has a duty of good faith and fair dealing with all parties, including but not limited to covered persons and pharmacies, with whom it interacts in the performance of pharmacy benefits management services.

The bill prohibits carriers and pharmacy benefits managers from requiring a covered person to make a payment at the point of sale for a covered prescription drug in an amount greater than the lesser of:

- (1) the applicable cost-sharing amount for the prescription drug; or
- (2) the amount a covered person would pay for the prescription medication if the covered person purchased the prescription medication without using a health benefits plan.

The bill requires pharmacy benefits managers to provide an internal appeal mechanism to resolve any dispute raised by a carrier or pharmacy, regardless of whether the carrier or pharmacy benefits manager has a contract to challenge maximum allowable costs for a specified drug.

The bill requires a carrier, or a pharmacy benefits manager under contract with a carrier, to use a single maximum allowable cost list to establish the maximum amount to be paid by a health benefits plan to a pharmacy provider for a generic drug or a brand-name drug that has at least one generic equivalent available. A carrier, or a pharmacy benefits manager under contract with a carrier, is required to use the same maximum allowable cost list for each pharmacy provider.

Carriers are to maintain detailed records of transactions and submit annual documentation showing that any compensation remitted by a manufacturer, developer, or labeler to a carrier or a pharmacy benefits manager was either remitted directly to the covered person at the point of sale or retained by the carrier to be used to offset the premium for covered persons in future plan years.

The bill mandates that carriers and pharmacy benefits managers establish pharmacy and therapeutics committees that are free from conflicts of interest and use one or more formularies.

The bill provides that, for the purposes of calculating a carrier's anticipated loss ratio, pharmacy benefits manager compensation constitutes an administrative cost rather than a benefit.

The bill requires carriers to have the ability to access all data related to the administration and provision of prescription drug benefits administered by a pharmacy benefits manager under the health benefits plan.

The bill requires pharmacy benefits managers to disclose in writing to a carrier or health benefits plan any activity of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the pharmacy benefits manager's relationship with the carrier or plan.

The bill also increases the penalties pharmacy benefits managers are subject to for violations, and provide that pharmacy benefits managers may be required to make restitution and pay compensatory damages by the commissioner.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) require the Department of Banking and Insurance (department) to establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager;

(2) stipulate that pharmacy benefits managers are to be licensed with the department while pharmacy services administrative organizations are to be registered with the department;

(3) require applicants for licensure or registration to provide, upon the department's request, any contracts and documents between pharmacies, pharmacy benefits managers, and pharmacy services administrative organizations;

(4) stipulate that pharmacy services administrative organizations are not subject to certain requirements applicable to pharmacy benefits managers under the bill;

(5) require pharmacy benefits managers to disclose in writing to a carrier or health benefits plan any activity of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the pharmacy benefits manager's relationship with the carrier or plan;

(6) revise civil penalties for persons who willfully disclose certain confidential information;

(7) provide that records, contracts, documents, or data submitted to the department by a carrier or a pharmacy benefits manager are to be kept confidential and protected from public disclosure;

(8) increase the penalties pharmacy benefits managers are subject to for violations, and provide that pharmacy benefits managers may be required to make restitution and pay compensatory damages by the commissioner;

(9) require the Drug Affordability Council to examine certain information concerning the prescription drug rebate system;

(10) require compensation remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a PBM under contract with a carrier related to prescription drug benefits be remitted directly to the covered person or be remitted directly to the covered person at the point of sale or retained by the carrier to be used to offset the premium for covered persons in future plan years; and

(11) extend the effective date of the bill from the first day of the seventh month to the first day of the 18th month following the date of enactment, and provide that the bill applies to contracts and agreements entered into, renewed, modified, or amended on or after the effective date.

FISCAL IMPACT:

The Office of Legislative Services estimates that this bill would result in a modest increase in State revenues from license issuance and renewal fees paid by pharmacy benefits managers and pharmacy services administrative organizations.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 536 and 2841**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2023

The Assembly Budget Committee reports favorably and with committee amendments the Assembly Committee Substitute for Bill Nos. 536 and 2841 (2R).

As amended, this substitute bill sets new transparency standards for pharmacy benefits manager business practices.

Specifically, the bill concerns the licensing and reporting requirements of carriers, pharmacy benefits managers, and pharmacy services administrative organizations. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administrative organizations register with the Department of Banking and Insurance every three years. The bill requires the Department of Banking and Insurance to establish, by regulation, certain minimum standards for the issuance of licenses to pharmacy benefits managers.

The bill requires carriers to monitor all activities carried out on behalf of the carrier by a pharmacy benefits manager if the carrier contracts with a pharmacy benefits manager. All funds received by the pharmacy benefits manager in relation to providing pharmacy benefits management services must be used or distributed only pursuant to the pharmacy benefits manager's contract with the health benefits plan or carrier or applicable law; including any administrative fee or payment to the pharmacy benefits manager expressly provided for in the contract to compensate the pharmacy benefits manager for its services. Any funds received by the pharmacy benefits manager through spread pricing are also subject to these requirements.

The bill provides that a pharmacy benefits manager interacting with a covered person has the same duty to a covered person as the health benefits plan or carrier for whom it is performing pharmacy benefits management services. The bill also provides that a pharmacy benefits manager has a duty of good faith and fair dealing with all parties, including but not limited to covered persons and pharmacies, with whom it interacts in the performance of pharmacy benefits management services.

The bill prohibits carriers and pharmacy benefits managers from requiring a covered person to make a payment at the point of sale for a covered prescription drug in an amount greater than the lesser of:

- (1) the applicable cost-sharing amount for the prescription drug; or
- (2) the amount a covered person would pay for the prescription medication if the covered person purchased the prescription medication without using a health benefits plan.

The bill requires pharmacy benefits managers to provide an internal appeal mechanism to resolve any dispute raised by a carrier or pharmacy, regardless of whether the carrier or pharmacy benefits manager has a contract to challenge maximum allowable costs for a specified drug.

The bill requires a carrier, or a pharmacy benefits manager under contract with a carrier, to use a single maximum allowable cost list to establish the maximum amount to be paid by a health benefits plan to a pharmacy provider for a generic drug or a brand-name drug that has at least one generic equivalent available. A carrier, or a pharmacy benefits manager under contract with a carrier, is required to use the same maximum allowable cost list for each pharmacy provider.

Carriers are to maintain detailed records of transactions and submit annual documentation showing that any compensation remitted by a manufacturer, developer, or labeler to a carrier or a pharmacy benefits manager was either remitted directly to the covered person at the point of sale or retained by the carrier to be used to offset the premium for covered persons in future plan years.

The bill mandates that carriers and pharmacy benefits managers establish pharmacy and therapeutics committees that are free from conflicts of interest and use one or more formularies.

The bill provides that, for the purposes of calculating a carrier's anticipated loss ratio, pharmacy benefits manager compensation constitutes an administrative cost rather than a benefit.

The bill requires carriers to have the ability to access all data related to the administration and provision of prescription drug benefits administered by a pharmacy benefits manager under the health benefits plan.

The bill requires pharmacy benefits managers to disclose in writing to a carrier or health benefits plan any activity of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the pharmacy benefits manager's relationship with the carrier or plan.

The bill also increases the penalties pharmacy benefits managers are subject to for violations, and provide that pharmacy benefits managers may be required to make restitution and pay compensatory damages by the commissioner.

As reported by the committee, the Assembly Committee Substitute for Bill Nos. 536 and 2841 (2R) is identical to Senate Bill No. 1616 (1R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) revise the definition of “compensation” remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a pharmacy benefits manager under contract with a carrier related to prescription drug benefits to include only a direct or indirect financial benefit that is attributed to, directly or indirectly, the utilization of a health benefits plan or enrollment in a health benefits plan; and

(2) make a technical correction.

FISCAL IMPACT:

The Office of Legislative Services estimates that this bill would result in a modest increase in State revenues from license issuance and renewal fees paid by pharmacy benefits managers, and registration issuance and renewal fees paid by pharmacy services administrative organizations.

ASSEMBLY HEALTH COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 536 and 2841

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 24, 2022

The Assembly Health Committee reports favorably and with committee amendments Assembly Committee Substitute for Assembly Bill Nos. 536 and 2841.

As amended by the committee, this substitute bill sets new transparency standards for pharmacy benefits manager (PBM) business practices. Specifically, the bill concerns the licensing and reporting requirements of a carrier or a PBM. The bill requires that PBMs apply for a license with the Department of Banking and Insurance every three years and requires carriers to ensure that a PBM under contract with the carrier owes a fiduciary duty to the carrier. Carriers are to maintain detailed records of transactions and submit annual documentation showing that any compensation remitted by a manufacturer, developer, or labeler to a carrier or PBM was either remitted directly to the covered person at the point of sale to reduce out of pocket expenses or used to offset premium costs for future plan years. Additionally, the bill mandates that carriers and PBMs establish pharmacy and therapeutics committees that are free from conflicts of interest and use one or more formularies. For the purposes of calculating a carrier's anticipated loss ratio, PBM compensation constitutes an administrative cost rather than a benefit.

COMMITTEE AMENDMENTS:

The committee proposes to amend the bill to:

(1) update the definition of "pharmacy benefits manager compensation;"

(1) include licensure requirements for pharmacy service administrative organizations (PSAOs) and amend the conditions for licensure to include:

(a) the disclosure of the name of each person owning 10 percent or greater interest in the applicant; and

(b) the disclosure of any information required for licensure as an organized delivery system;

(2) allow PBMs and PSAOs licensed under this bill to cease maintaining organized delivery system license, if the PBM or PSAO applied for, received, and maintained a license as an organized delivery system;

(3) lists the insurance laws that apply to licensed PBMs;

(4) requires the department to suspend or revoke a license under this bill if a PBM or PSAO engages in any activity that constitutes a violation of State or federal law;

(5) include requirements providing that:

(a) PBMs have a duty of good faith and fair dealing in the performance of all of its contractual duties;

(b) PBMs owe the same duty to a covered person as a health benefits plan or carrier; and

(b) a carrier of PBM must not require a covered person to pay more at the point of sale than the amount they would pay without using a health benefit plan;

(6) move the “gag clause” language from section 3 of the bill to section 10;

(7) remove the provision that mail order pharmacies must not be included in determining the adequacy of a retail pharmacy network;

(8) the duties placed on PBMs under section 3 apply even if the PBM is under contract with the State Health Benefits Plan, the School Employees Health Benefits Plan, the State Medicaid program, or the federal “Employee Retirement Income Security Act of 1974”;

(9) replace requirement that a PBM maintain a “reasonable administrative procedure” with an internal appeal mechanism and independent arbitration;

(10) requires compensation remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a PBM under contract with a carrier related to prescription drug benefits be remitted directly to the covered person only;

(11) include the definition of “compensation” under section 6;

(12) replace pharmacy and therapeutics committee conflict of interest standards with those set by the Center for Medicare and Medicaid Services, the Nation Committee for Quality Assurance, or another independent accrediting organization;

(13) require that the provisions of section 8 apply to the State Health Benefits Program, the School Employees’ Health Benefits Program, Medicaid, and self-insured health benefits plans;

(14) require that a person who knowing discloses PBM information to an unauthorized person be guilty of a crime of the fourth degree and be subject to a civil penalty in an amount not to exceed \$10,000; and

(15) that any records, documents, or data provided in section 8 not be considered a government record.

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 536 and 2841
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JULY 3, 2023

SUMMARY

Synopsis: Establishes new transparency standards for pharmacy benefits manager business practices.

Type of Impact: State revenue increase from pharmacy services administrative organization registration fees.

Agencies Affected: Department of Banking and Insurance.

Office of Legislative Services Estimate

Fiscal Impact	
State Cost Increase	Indeterminate
State Revenue Increase	Modest increase, likely around \$20,000

- The Office of Legislative Services (OLS) estimates that this bill will result in a modest increase in State revenue collections of approximately \$20,000 every three years. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administration organizations register with the Department of Banking and Insurance every three years. Given that the revised pharmacy benefits manager license term and construct does not contain any material changes from the existing process, the entire net increase in revenue will derive from the newly-required pharmacy services administrative organization registrations. There are currently eight pharmacy services administrative organizations operating in New Jersey.
- The OLS notes that the bill may result in annual increase in State revenue collections from penalties pharmacy benefits managers are subject to for violations of the provisions of the bill.
- The OLS also notes that the enactment of the bill may result in an indeterminate State administrative cost increase from the bill’s requirement that the department establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager.



BILL DESCRIPTION

This bill sets new transparency standards for pharmacy benefits manager business practices. Specifically, the bill concerns the licensing and reporting requirements of carriers, pharmacy benefits managers, and pharmacy services administrative organizations. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administrative organizations register with the Department of Banking and Insurance every three years and requires carriers to ensure that a pharmacy benefits manager under contract with the carrier acts in good faith and fair dealing in the performance of all its contractual duties. The bill requires the Department of Banking and Insurance to establish, by regulation, certain minimum standards for the issuance of licenses to pharmacy benefits managers.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that this bill will result in a positive impact, likely insignificant, on State revenue through increased license and registration fees. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administration organizations register with the Department of Banking and Insurance every three years. Under current state regulations, pharmacy benefits managers register under the process used for an “Organized Delivery System” with a three-year fee of \$2,500. The bill provides that any firms which have registered under the organized delivery system process would have 24 months to apply under the new pharmacy benefits manager license process. Given the high concentration of firms in this market (there are only 15 firms nationally that have any measurable market share) and the length of the grace period, there will be no material effect from license revenues from this change for pharmacy benefits managers.

The OLS assumes that a similar license fee of \$2,500 will be charged for the pharmacy services administrative organization registration. Currently, there are eight pharmacy services administration organizations active in New Jersey. Considering that it is unlikely that any of these firms would be operating under an organized delivery system license or certification, the OLS estimate assumes that all eight firms will register to comply with the requirements in the year following enactment.

The bill increases the penalties pharmacy benefits managers are subject to for violations of the provisions of the bill. The OLS notes that this provision may increase revenue collections by an indeterminate, likely insignificant, amount.

The OLS also notes that the enactment of the bill may result in an indeterminate State administrative cost increase from the bill’s requirement that the department establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager.

Section: Commerce, Labor and Industry
Analyst: John Gaudio
Assistant Fiscal Analyst
Approved: Thomas Koenig
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE
 [Third Reprint]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 536 and 2841
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JULY 5, 2023

SUMMARY

- Synopsis:** Establishes new transparency standards for pharmacy benefits manager business practices.
- Type of Impact:** State revenue increase from pharmacy services administrative organization registration fees.
- Agencies Affected:** Department of Banking and Insurance.

Office of Legislative Services Estimate

Fiscal Impact	
State Cost Increase	Indeterminate
State Revenue Increase	Modest increase, likely around \$20,000

- The Office of Legislative Services (OLS) estimates that this bill will result in a modest increase in State revenue collections of approximately \$20,000 every three years. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administration organizations register with the Department of Banking and Insurance every three years. Given that the revised pharmacy benefits manager license term and construct does not contain any material changes from the existing process, the entire net increase in revenue will derive from the newly-required pharmacy services administrative organization registrations. There are currently eight pharmacy services administrative organizations operating in New Jersey.
- The OLS notes that the bill may result in an annual increase in State revenue collections from penalties pharmacy benefits managers are subject to for violations of the provisions of the bill.
- The OLS also notes that the enactment of the bill may result in an indeterminate State administrative cost increase from the bill’s requirement that the department establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager.

BILL DESCRIPTION

This bill sets new transparency standards for pharmacy benefits manager business practices. Specifically, the bill concerns the licensing and reporting requirements of carriers, pharmacy benefits managers, and pharmacy services administrative organizations. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administrative organizations register with the Department of Banking and Insurance every three years and requires carriers to ensure that a pharmacy benefits manager under contract with the carrier acts in good faith and fair dealing in the performance of all its contractual duties. The bill requires the Department of Banking and Insurance to establish, by regulation, certain minimum standards for the issuance of licenses to pharmacy benefits managers.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that this bill will result in a positive impact, likely insignificant, on State revenue through increased license and registration fees. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administration organizations register with the Department of Banking and Insurance every three years. Under current state regulations, pharmacy benefits managers register under the process used for an “Organized Delivery System” with a three-year fee of \$2,500. The bill provides that any firms which have registered under the organized delivery system process would have 24 months to apply under the new pharmacy benefits manager license process. Given the high concentration of firms in this market (there are only 15 firms nationally that have any measurable market share) and the length of the grace period, there will be no material effect from license revenues from this change for pharmacy benefits managers.

The OLS assumes that a similar license fee of \$2,500 will be charged for the pharmacy services administrative organization registration. Currently, there are eight pharmacy services administration organizations active in New Jersey. Considering that it is unlikely that any of these firms would be operating under an organized delivery system license or certification, the OLS estimate assumes that all eight firms will register to comply with the requirements in the year following enactment.

The bill increases the penalties pharmacy benefits managers are subject to for violations of the provisions of the bill. The OLS notes that this provision may increase revenue collections by an indeterminate, likely insignificant, amount.

The OLS also notes that the enactment of the bill may result in an indeterminate State administrative cost increase from the bill’s requirement that the department establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager.

Section: Commerce, Labor and Industry

Analyst: John Gaudioso
Assistant Fiscal Analyst

Approved: Thomas Koenig
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1616

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 14, 2022

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator TROY SINGLETON

District 7 (Burlington)

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator VIN GOPAL

District 11 (Monmouth)

Co-Sponsored by:

Senators Greenstein, Gill and Ruiz

SYNOPSIS

Establishes new transparency standards for pharmacy benefits manager business practices.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2023)

1 AN ACT concerning pharmacy benefits managers and amending and
2 supplementing P.L.2015, c.179.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to
8 read as follows:

9 1. As used in **[this act]** P.L.2015, c.179 (C.17B:27F-1 et seq.):

10 "Anticipated loss ratio" means the ratio of the present value of
11 the future benefits payments, including claim offsets after the point
12 of sale, to the present value of the future premiums of a policy form
13 over the entire period for which rates are computed to provide
14 health insurance coverage.

15 "Average wholesale price" means the average wholesale price of
16 a prescription drug determined by a national drug pricing publisher
17 selected by a carrier. The average wholesale price shall be
18 identified using the national drug code published by the National
19 Drug Code Directory within the United States Food and Drug
20 Administration.

21 "Brand-name drug" means a prescription drug marketed under a
22 proprietary name or registered trademark name, including a
23 biological product.

24 "Carrier" means an insurance company, health service
25 corporation, hospital service corporation, medical service
26 corporation, or health maintenance organization authorized to issue
27 health benefits plans in this State.

28 "Compensation" means any direct or indirect financial benefit,
29 including, but not limited to, rebates, discounts, credits, fees, grants,
30 chargebacks or other payments or benefits of any kind.

31 "Contracted pharmacy" means a pharmacy that participates in the
32 network of a pharmacy benefits manager through a contract with:

- 33 a. the pharmacy benefits manager directly;
34 b. a pharmacy services administration organization; or
35 c. a pharmacy group purchasing organization.

36 "Cost-sharing amount" means the amount paid by a covered
37 person as required under the covered person's health benefits plan
38 for a prescription drug at the point of sale.

39 "Covered person" means a person on whose behalf a carrier or
40 other entity, who is the sponsor of the health benefits plan, is
41 obligated to pay benefits pursuant to a health benefits plan.

42 "Department" means the Department of Banking and Insurance.

43 "Drug" means a drug or device as defined in R.S.24:1-1.

44 "Health benefits plan" means a benefits plan which pays hospital
45 or medical expense benefits for covered services, or prescription

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 drug benefits for covered services, and is delivered or issued for
2 delivery in this State by or through a carrier or any other sponsor.
3 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits
4 plan shall not include the following plans, policies or contracts:
5 accident only, credit disability, long-term care, Medicare
6 supplement coverage; TRICARE supplement coverage, coverage
7 for Medicare services pursuant to a contract with the United States
8 government, the State Medicaid program established pursuant to
9 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a
10 worker's compensation or similar law, the State Health Benefits
11 Program, the School Employees' Health Benefits Program, or a self-
12 insured health benefits plan governed by the provisions of the
13 federal "Employee Retirement Income Security Act of 1974,"
14 29 U.S.C. s.1001 et seq., coverage under a policy of private
15 passenger automobile insurance issued pursuant to P.L.1972, c.70
16 (C.39:6A-1 et seq.), or hospital confinement indemnity coverage.

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18 of which is to receive a prescription by mail, fax or electronic
19 submission, and to dispense medication to a covered person using
20 the United States Postal Service or other common or contract carrier
21 service and that provides consultation with patients electronically
22 rather than in person.

23 "Maximum allowable cost" means the maximum amount a health
24 insurer will pay for a generic drug or brand-name drug that has at
25 least one generic alternative available.

26 "Network pharmacy" means a licensed retail pharmacy or other
27 pharmacy provider that contracts with a pharmacy benefits
28 manager.

29 "Pharmacy" means any place in the State, either physical or
30 electronic, where drugs are dispensed or pharmaceutical care is
31 provided by a licensed pharmacist, but shall not include a medical
32 office under the control of a licensed physician.

33 "Pharmacy benefits manager" means a corporation, business, or
34 other entity, or unit within a corporation, business, or other entity,
35 that, pursuant to a contract or under an employment relationship
36 with a carrier, a self-insurance plan or other third-party payer, either
37 directly or through an intermediary, administers prescription drug
38 benefits on behalf of a purchaser.

39 "Pharmacy benefits manager compensation" means the
40 difference between: (1) the value of payments made by a carrier of
41 a health benefits plan to its pharmacy benefits manager; and (2) the
42 value of payments made by the pharmacy benefits manager to
43 dispensing pharmacists for the provision of prescription drugs or
44 pharmacy services with regard to pharmacy benefits covered by the
45 health benefits plan.

46 "Pharmacy benefits management services" means the provision
47 of any of the following services on behalf of a purchaser: the
48 procurement of prescription drugs at a negotiated rate for

1 dispensation within this State; the processing of prescription drug
2 claims; or the administration of payments related to prescription
3 drug claims.

4 "Prescription" means a prescription as defined in section 5 of
5 P.L.1977, c.240 (C.24:6E-4).

6 "Prescription drug benefits" means the benefits provided for
7 prescription drugs and pharmacy services for covered services
8 under a health benefits plan contract.

9 "Purchaser" means any sponsor of a health benefits plan who
10 enters into an agreement with a pharmacy benefits management
11 company for the provision of pharmacy benefits management
12 services to covered persons.

13 (cf: P.L.2019, c.274, s.2)

14

15 2. (New section) a. A corporation, business, or other entity
16 shall not act as a pharmacy benefits manager in this State without
17 first obtaining a license from the department. An applicant for
18 licensure as a pharmacy benefits manager shall provide to the
19 department information that includes, but is not limited to, the
20 following:

21 (1) the name of the applicant;

22 (2) the address and telephone number of the applicant;

23 (3) the name and address of the applicant's agent for service of
24 process in the State;

25 (4) the name and address of each person beneficially interested
26 in the applicant; and

27 (5) the name and address of each person with management or
28 control over the applicant.

29 b. A license issued pursuant to this section shall be valid for a
30 period of three years and may be renewed at the end of the three-
31 year period. The commissioner shall establish fees for a license
32 issued or renewed pursuant to this section.

33 c. The department may issue a pharmacy benefits manager
34 license to an applicant only if the department is satisfied that the
35 applicant possesses the necessary organization, expertise, and
36 financial integrity to supply the services sought to be offered.

37 d. The department may issue a pharmacy benefits manager
38 license subject to restrictions or limitations, including the type of
39 services that may be supplied or the activities in which the
40 pharmacy benefits manager may engage.

41 e. A license issued pursuant to this section shall not be
42 transferable.

43 f. The department may suspend, revoke or place on probation a
44 pharmacy benefits manager license if:

45 (1) the pharmacy benefits manager has engaged in fraudulent
46 activity that constitutes a violation of State or federal law;

1 (2) the department has received consumer complaints that
2 justify an action under this subsection to protect the safety and
3 interests of consumers;

4 (3) the pharmacy benefits manager fails to pay the original
5 issuance or renewal fee for the license; or

6 (4) the pharmacy benefits manager fails to comply with any
7 requirement set forth in P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9 g. If a corporation, business, or other entity acts as a pharmacy
10 benefits manager without obtaining a license pursuant to this
11 section, the corporation, business, or other entity shall be subject to:

12 (1) a warning notice;

13 (2) an opportunity to cure the violation within 14 days following
14 the issuance of the notice;

15 (3) a hearing before the commissioner within 70 days following
16 the issuance of the notice; and

17 (4) if the violation has not been cured pursuant to subsection a.
18 of this section, a penalty of not less than \$5,000 or more than
19 \$10,000.

20 h. Notwithstanding the provisions of subsection a. of this
21 section, a pharmacy benefits manager certified or licensed as an
22 organized delivery system prior to the effective date of
23 P.L. , c. (C.) (pending before the Legislature as this bill),
24 in accordance with P.L.1999, c.409 (C.17:48H-1 et seq.), may
25 continue to operate during the pendency of its application submitted
26 pursuant to this section, but no more than 18 months after the
27 effective date of this act.

28

29 3. (New section) a. A carrier shall:

30 (1) monitor all activities carried out on behalf of the carrier by a
31 pharmacy benefits manager if the carrier contracts with a pharmacy
32 benefits manager and is related to a carrier's prescription drug
33 benefits; and

34 (2) ensure that all requirements of this section are met.

35 b. A carrier that contracts with a pharmacy benefits manager to
36 perform any activities related to the carrier's prescription drug
37 benefits shall ensure that, under the contract, the pharmacy benefits
38 manager acts as the carrier's agent and owes a fiduciary duty to the
39 carrier in the pharmacy benefits manager's activities related to the
40 carrier's prescription drug benefits.

41 c. A carrier shall not enter into a contract or agreement, or
42 allow a pharmacy benefits manager or any entity acting on the
43 carrier's behalf to enter into a contract or agreement, that prohibits a
44 pharmacy from:

45 (1) providing a covered person with the option of paying the
46 pharmacy provider's cash price for the purchase of a prescription
47 drug and not filing a claim with the covered person's carrier if the
48 cash price is less than the covered person's cost-sharing amount; or

1 (2) providing information to a State or federal agency, law
2 enforcement agency, or the department when such information is
3 required by law.

4 d. A carrier or pharmacy benefits manager shall not require a
5 covered person to make a payment at the point of sale for a covered
6 prescription drug in an amount greater than:

7 (1) the applicable cost-sharing amount for the prescription drug;
8 or

9 (2) the total amount the pharmacy will be reimbursed for the
10 prescription drug from the pharmacy benefits manager or carrier,
11 including the cost-sharing amount paid by a covered person,
12 whichever is less.

13 e. A carrier shall provide a reasonably adequate retail
14 pharmacy network for the provision of prescription drugs for its
15 covered persons. A mail order pharmacy shall not be included in
16 determining the adequacy of a retail pharmacy network.

17

18 4. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to
19 read as follows:

20 2. Upon execution or renewal of each contract, or at such a
21 time when there is any material change in the term of the contract, a
22 pharmacy benefits manager shall, with respect to contracts between
23 a pharmacy benefits manager and a pharmacy services
24 administrative organization, or between a pharmacy benefits
25 manager and a contracted pharmacy:

26 a. (1) include in the contract the sources utilized to determine
27 multiple source generic drug pricing, brand drug pricing, and the
28 wholesaler in the State of New Jersey where pharmacies may
29 acquire the product, including, but not limited to, the brand
30 effective rate, generic effective rate, dispensing fee effective rate,
31 maximum allowable cost or any other pricing formula for pharmacy
32 reimbursement;

33 (2) update that pricing information every seven calendar days;
34 and

35 (3) establish a reasonable process by which contracted
36 pharmacies have a method to access relevant maximum allowable
37 cost pricing lists, brand effective rate, generic effective rate, and
38 dispensing fee effective rate, or any other pricing formulas for
39 pharmacy reimbursement **]; and**.

40 b. Additionally, a pharmacy benefits manager shall:

41 (1) **【Maintain】** maintain a procedure to eliminate drugs from the
42 list of drugs subject to multiple source generic drug pricing and
43 brand drug pricing, or modify maximum allowable cost rates, brand
44 effective rate, generic effective rate, dispensing fee effective rate or
45 any other applicable pricing formula in a timely fashion and make
46 that procedure easily accessible to the pharmacy services
47 administrative organizations or the pharmacies that they are

1 contractually obligated with to provide that information according
2 to the requirements of this section; and

3 (2) provide a reasonable administrative appeal procedure,
4 including a right to appeal in accordance with section 4 of PL.2015,
5 c.179 (C.17B:27F-4), to allow pharmacies with which the carrier or
6 pharmacy benefits manager has a contract to challenge maximum
7 allowable costs for a specified drug.

8 (cf: P.L.2019, c.274, s.3)

9

10 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to
11 read as follows:

12 3. a. **【**In order to place a particular prescription drug on a
13 multiple source generic list, the pharmacy benefits manager shall, at
14 a minimum, ensure that:**】** A carrier, or a pharmacy benefits manager
15 under contract with a carrier, shall use a single maximum allowable
16 cost list to establish the maximum amount to be paid by a health
17 benefits plan to a pharmacy provider for a generic drug or a brand-
18 name drug that has at least one generic equivalent available. A
19 carrier, or a pharmacy benefits manager under contract with a
20 carrier, shall use the same maximum allowable cost list for each
21 pharmacy provider.

22 b. A maximum allowable cost may be set for a prescription
23 drug, or a prescription drug may be allowed to continue on a
24 maximum allowable cost list, only if:

25 (1) The drug is listed as therapeutically and pharmaceutically
26 equivalent or "A," "B," "NR," or "NA" rated in the Food and Drug
27 Administration's most recent version of the Approved Drug
28 Products with Therapeutic Equivalence Evaluations, commonly
29 known as the "Orange Book;" and

30 (2) The drug is available for purchase without limitations by all
31 pharmacies in the State from national or regional wholesalers and is
32 not obsolete or temporarily unavailable.

33 **【b.】** c. A pharmacy benefits manager shall not penalize a
34 pharmacist or pharmacy on audit if the pharmacist or pharmacy
35 performs a generic substitution pursuant to the "Prescription Drug
36 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-
37 1 et seq.).

38 d. A carrier, or a pharmacy benefits manager under contract
39 with a carrier, shall use the average wholesale price to establish the
40 maximum payment for a brand-name drug for which a generic
41 equivalent is not available or a prescription drug not included on a
42 maximum allowable cost list. In order to use the average wholesale
43 price of a brand-name drug or prescription drug not included on a
44 maximum allowable cost list, a carrier, or a pharmacy benefits
45 manager under contract with a carrier, shall use only one national
46 drug pricing source during a calendar year, unless the original drug
47 pricing source is no longer available. A carrier, or a pharmacy
48 benefits manager under contract with a carrier, shall use the same

1 national drug pricing source for each pharmacy provider and
2 identify on its publicly accessible website the name of the national
3 drug pricing source used to determine the average wholesale price
4 of a prescription drug not included on the maximum allowable cost
5 list.

6 e. The amount paid by a carrier or a carrier's pharmacy benefits
7 manager to a pharmacy provider under contract with the carrier or
8 the carrier's pharmacy benefits manager for dispensing a
9 prescription drug shall be the ingredient cost plus the dispensing fee
10 less any cost-sharing amount paid by a covered person.

11 The ingredient cost shall not exceed the maximum allowable cost
12 or average wholesale price, as applicable, and shall be disclosed by
13 a carrier's pharmacy benefits manager to the carrier.

14 Only the pharmacy provider that dispensed the prescription drug
15 shall retain the payment described in this subsection.

16 (cf: P.L.2015, c. 179, s.3)

17

18 6. (New section) a. Compensation remitted by or on behalf of
19 a pharmaceutical manufacturer, developer or labeler, directly or
20 indirectly, to a carrier or to a pharmacy benefits manager under
21 contract with a carrier related to prescription drug benefits shall be:

22 (1) remitted directly to the covered person at the point of sale to
23 reduce the out-of-pocket cost to the covered person associated with
24 a particular prescription drug; or

25 (2) remitted to, and retained by, the carrier. Compensation
26 remitted to the carrier shall be applied by the carrier in its plan
27 design and in future plan years to offset the premium for covered
28 persons.

29 b. Beginning on March 1 next following the effective date of
30 P.L. , c. (C.) (pending before the Legislature as this bill),
31 and annually thereafter, a carrier shall file with the department a
32 report explaining how the carrier has complied with the provisions
33 of this section. The report shall be written in a manner and form
34 determined by the department.

35

36 7. (New section) a. A carrier, or a pharmacy benefits manager
37 under contract with a carrier, shall establish a pharmacy and
38 therapeutics committee responsible for managing the formulary
39 system.

40 b. A carrier, or a pharmacy benefits manager under contract
41 with a carrier, shall not allow a person with a conflict of interest to
42 be a member of its pharmacy and therapeutics committee. A person
43 shall not serve as a member of a pharmacy and therapeutics
44 committee if the person:

45 (1) is employed, or was employed within the preceding year, by
46 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
47 distributor; or

1 (2) receives compensation, or received compensation within the
2 preceding year, from a pharmaceutical manufacturer, developer,
3 labeler, wholesaler, or distributor.

4
5 8. (New section) a. A carrier shall maintain and have the
6 ability to access all data related to the administration and provision
7 of prescription drug benefits administered by a pharmacy benefits
8 manager under the health benefits plan of the carrier, including, but
9 not limited to:

10 (1) the names, addresses, member identification numbers,
11 protected health information and other personal information of
12 covered persons; and

13 (2) any contracts, documentation, and records, including
14 transaction and pricing data and post point-of-sale information,
15 related to the dispensing of prescription drugs to covered persons
16 under the health benefits plan.

17 b. A sale or transaction involving the transfer of any records,
18 information or data described in subsection a. of this section must
19 comply with the federal Health Insurance Portability and
20 Accountability Act of 1996, Pub. L. No. 104-191, and the federal
21 Health Information Technology for Economic and Clinical Health
22 Act, Pub. L. No. 111-5, and any regulations adopted pursuant to
23 those laws.

24 c. A carrier may audit all transaction records related to the
25 dispensing of prescription drugs to covered persons under a health
26 benefits plan. A carrier may conduct audits at a location of its
27 choosing and with an auditor of its choosing.

28 d. A carrier shall maintain all records, information and data
29 described in subsection a. of this section and all audit records
30 described in subsection c. of this section for a period of no less than
31 five years.

32 e. Upon request, a carrier shall provide to the department any
33 records, contracts, documents or data held by the carrier or the
34 carrier's pharmacy benefits manager for inspection, examination or
35 audit purposes.

36
37 9. (New section) a. If a carrier uses a pharmacy benefits
38 manager to administer or manage the prescription drug benefits of
39 covered persons, any pharmacy benefits manager compensation, for
40 purposes of calculating a carrier's anticipated loss ratio or any loss
41 ratio calculated as part of any applicable medical loss ratio filing or
42 rate filing, shall:

43 (1) constitute an administrative cost incurred by the carrier in
44 connection with a health benefits plan; and

45 (2) not constitute a benefit provided under a health benefits
46 plan. A carrier shall claim only the amounts paid by the pharmacy
47 benefits manager to a pharmacy or pharmacist as an incurred claim.

1 b. Any rate filing submitted by a carrier with respect to a health
2 benefits plan that provides coverage for prescription drugs or
3 pharmacy services, that is administered or managed by a pharmacy
4 benefits manager, shall include:

5 (1) a memorandum prepared by a qualified actuary describing
6 the calculation of the pharmacy benefits manager compensation;
7 and

8 (2) any records and supporting information as the department
9 reasonably determines is necessary to confirm the calculation of the
10 pharmacy benefits manager compensation.

11 c. Upon request, a carrier shall provide any records to the
12 department that relate to the calculation of the pharmacy benefits
13 manager compensation.

14 d. A pharmacy benefits manager shall provide any necessary
15 documentation requested by a carrier that relates to pharmacy
16 benefits manager compensation in order to comply with the
17 requirements of this section.

18

19 10. Section 6 of P.L.2019, c.274 (C.17B:27F-9) is amended to
20 read as follows:

21 6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-
22 1 et seq.) shall apply to all pharmacy benefits managers operating in
23 the State of New Jersey [, except for any]. Requirements imposed
24 on carriers by the provisions of P.L.2015, c.179 (C.17B:27F-
25 1 et seq.) shall not apply to an agreement by a pharmacy benefits
26 manager to administer prescription drug benefits on behalf of the
27 State Health Benefits Plan, the School Employees Health Benefits
28 Plan, the State Medicaid program established pursuant to P.L.1968,
29 c.413 (C.30:4D-1 et seq.), or a self-insured health benefits plan
30 governed by the provisions of the federal "Employee Retirement
31 Income Security Act of 1974," 29 U.S.C., ss.1001 et seq.

32 (cf: P.L.2019, c.274, s.6)

33

34 11. This act shall take effect on the first day of the seventh
35 month next following the date of enactment, but the Commissioner
36 of the Banking and Insurance may take such anticipatory
37 administrative action in advance thereof as shall be necessary for
38 the implementation of the act.

39

40

41

STATEMENT

42

43 This bill sets new transparency standards for pharmacy benefits
44 manager (PBM) business practices. Specifically, the bill concerns
45 the licensing and reporting requirements of a carrier or a PBM. The
46 bill requires that PBMs apply for a license with the Department of
47 Banking and Insurance every three years and requires carriers to
48 ensure that a PBM under contract with the carrier owes a fiduciary

S1616 VITALE, SINGLETON

11

1 duty to the carrier. Carriers are to maintain detailed records of
2 transactions and submit annual documentation showing that any
3 compensation remitted by a manufacturer, developer, or labeler to a
4 carrier or PBM was either remitted directly to the covered person at
5 the point of sale to reduce out of pocket expenses or used to offset
6 premium costs for future plan years. Additionally, the bill mandates
7 that carriers and PBMs establish pharmacy and therapeutics
8 committees that are free from conflicts of interest and use one or
9 more formularies. For the purposes of calculating a carrier's
10 anticipated loss ratio, PBM compensation constitutes an
11 administrative cost rather than a benefit.

SENATE, No. 1616

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 14, 2022

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator TROY SINGLETON

District 7 (Burlington)

Senator NELLIE POU

District 35 (Bergen and Passaic)

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21 service and that provides consultation with patients electronically
22 rather than in person.

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24 insurer will pay for a generic drug or brand-name drug that has at
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22 (2) the address and telephone number of the applicant;

23 (3) the name and address of the applicant's agent for service of
24 process in the State;

25 (4) the name and address of each person beneficially interested
26 in the applicant; and

27 (5) the name and address of each person with management or
28 control over the applicant.

29 b. A license issued pursuant to this section shall be valid for a
30 period of three years and may be renewed at the end of the three-
31 year period. The commissioner shall establish fees for a license
32 issued or renewed pursuant to this section.

33 c. The department may issue a pharmacy benefits manager
34 license to an applicant only if the department is satisfied that the
35 applicant possesses the necessary organization, expertise, and
36 financial integrity to supply the services sought to be offered.

37 d. The department may issue a pharmacy benefits manager
38 license subject to restrictions or limitations, including the type of
39 services that may be supplied or the activities in which the
40 pharmacy benefits manager may engage.

41 e. A license issued pursuant to this section shall not be
42 transferable.

43 f. The department may suspend, revoke or place on probation a
44 pharmacy benefits manager license if:

45 (1) the pharmacy benefits manager has engaged in fraudulent
46 activity that constitutes a violation of State or federal law;

1 (2) the department has received consumer complaints that
2 justify an action under this subsection to protect the safety and
3 interests of consumers;

4 (3) the pharmacy benefits manager fails to pay the original
5 issuance or renewal fee for the license; or

6 (4) the pharmacy benefits manager fails to comply with any
7 requirement set forth in P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9 g. If a corporation, business, or other entity acts as a pharmacy
10 benefits manager without obtaining a license pursuant to this
11 section, the corporation, business, or other entity shall be subject to:

12 (1) a warning notice;

13 (2) an opportunity to cure the violation within 14 days following
14 the issuance of the notice;

15 (3) a hearing before the commissioner within 70 days following
16 the issuance of the notice; and

17 (4) if the violation has not been cured pursuant to subsection a.
18 of this section, a penalty of not less than \$5,000 or more than
19 \$10,000.

20 h. Notwithstanding the provisions of subsection a. of this
21 section, a pharmacy benefits manager certified or licensed as an
22 organized delivery system prior to the effective date of
23 P.L. , c. (C.) (pending before the Legislature as this bill),
24 in accordance with P.L.1999, c.409 (C.17:48H-1 et seq.), may
25 continue to operate during the pendency of its application submitted
26 pursuant to this section, but no more than 18 months after the
27 effective date of this act.

28

29 3. (New section) a. A carrier shall:

30 (1) monitor all activities carried out on behalf of the carrier by a
31 pharmacy benefits manager if the carrier contracts with a pharmacy
32 benefits manager and is related to a carrier's prescription drug
33 benefits; and

34 (2) ensure that all requirements of this section are met.

35 b. A carrier that contracts with a pharmacy benefits manager to
36 perform any activities related to the carrier's prescription drug
37 benefits shall ensure that, under the contract, the pharmacy benefits
38 manager acts as the carrier's agent and owes a fiduciary duty to the
39 carrier in the pharmacy benefits manager's activities related to the
40 carrier's prescription drug benefits.

41 c. A carrier shall not enter into a contract or agreement, or
42 allow a pharmacy benefits manager or any entity acting on the
43 carrier's behalf to enter into a contract or agreement, that prohibits a
44 pharmacy from:

45 (1) providing a covered person with the option of paying the
46 pharmacy provider's cash price for the purchase of a prescription
47 drug and not filing a claim with the covered person's carrier if the
48 cash price is less than the covered person's cost-sharing amount; or

1 (2) providing information to a State or federal agency, law
2 enforcement agency, or the department when such information is
3 required by law.

4 d. A carrier or pharmacy benefits manager shall not require a
5 covered person to make a payment at the point of sale for a covered
6 prescription drug in an amount greater than:

7 (1) the applicable cost-sharing amount for the prescription drug;
8 or

9 (2) the total amount the pharmacy will be reimbursed for the
10 prescription drug from the pharmacy benefits manager or carrier,
11 including the cost-sharing amount paid by a covered person,
12 whichever is less.

13 e. A carrier shall provide a reasonably adequate retail
14 pharmacy network for the provision of prescription drugs for its
15 covered persons. A mail order pharmacy shall not be included in
16 determining the adequacy of a retail pharmacy network.

17

18 4. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to
19 read as follows:

20 2. Upon execution or renewal of each contract, or at such a
21 time when there is any material change in the term of the contract, a
22 pharmacy benefits manager shall, with respect to contracts between
23 a pharmacy benefits manager and a pharmacy services
24 administrative organization, or between a pharmacy benefits
25 manager and a contracted pharmacy:

26 a. (1) include in the contract the sources utilized to determine
27 multiple source generic drug pricing, brand drug pricing, and the
28 wholesaler in the State of New Jersey where pharmacies may
29 acquire the product, including, but not limited to, the brand
30 effective rate, generic effective rate, dispensing fee effective rate,
31 maximum allowable cost or any other pricing formula for pharmacy
32 reimbursement;

33 (2) update that pricing information every seven calendar days;
34 and

35 (3) establish a reasonable process by which contracted
36 pharmacies have a method to access relevant maximum allowable
37 cost pricing lists, brand effective rate, generic effective rate, and
38 dispensing fee effective rate, or any other pricing formulas for
39 pharmacy reimbursement **]; and**.

40 b. Additionally, a pharmacy benefits manager shall:

41 (1) **【Maintain】** maintain a procedure to eliminate drugs from the
42 list of drugs subject to multiple source generic drug pricing and
43 brand drug pricing, or modify maximum allowable cost rates, brand
44 effective rate, generic effective rate, dispensing fee effective rate or
45 any other applicable pricing formula in a timely fashion and make
46 that procedure easily accessible to the pharmacy services
47 administrative organizations or the pharmacies that they are

1 contractually obligated with to provide that information according
2 to the requirements of this section; and

3 (2) provide a reasonable administrative appeal procedure,
4 including a right to appeal in accordance with section 4 of PL.2015,
5 c.179 (C.17B:27F-4), to allow pharmacies with which the carrier or
6 pharmacy benefits manager has a contract to challenge maximum
7 allowable costs for a specified drug.

8 (cf: P.L.2019, c.274, s.3)

9

10 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to
11 read as follows:

12 3. a. **【**In order to place a particular prescription drug on a
13 multiple source generic list, the pharmacy benefits manager shall, at
14 a minimum, ensure that:**】** A carrier, or a pharmacy benefits manager
15 under contract with a carrier, shall use a single maximum allowable
16 cost list to establish the maximum amount to be paid by a health
17 benefits plan to a pharmacy provider for a generic drug or a brand-
18 name drug that has at least one generic equivalent available. A
19 carrier, or a pharmacy benefits manager under contract with a
20 carrier, shall use the same maximum allowable cost list for each
21 pharmacy provider.

22 b. A maximum allowable cost may be set for a prescription
23 drug, or a prescription drug may be allowed to continue on a
24 maximum allowable cost list, only if:

25 (1) The drug is listed as therapeutically and pharmaceutically
26 equivalent or "A," "B," "NR," or "NA" rated in the Food and Drug
27 Administration's most recent version of the Approved Drug
28 Products with Therapeutic Equivalence Evaluations, commonly
29 known as the "Orange Book;" and

30 (2) The drug is available for purchase without limitations by all
31 pharmacies in the State from national or regional wholesalers and is
32 not obsolete or temporarily unavailable.

33 **【b.】** c. A pharmacy benefits manager shall not penalize a
34 pharmacist or pharmacy on audit if the pharmacist or pharmacy
35 performs a generic substitution pursuant to the "Prescription Drug
36 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-
37 1 et seq.).

38 d. A carrier, or a pharmacy benefits manager under contract
39 with a carrier, shall use the average wholesale price to establish the
40 maximum payment for a brand-name drug for which a generic
41 equivalent is not available or a prescription drug not included on a
42 maximum allowable cost list. In order to use the average wholesale
43 price of a brand-name drug or prescription drug not included on a
44 maximum allowable cost list, a carrier, or a pharmacy benefits
45 manager under contract with a carrier, shall use only one national
46 drug pricing source during a calendar year, unless the original drug
47 pricing source is no longer available. A carrier, or a pharmacy
48 benefits manager under contract with a carrier, shall use the same

1 national drug pricing source for each pharmacy provider and
2 identify on its publicly accessible website the name of the national
3 drug pricing source used to determine the average wholesale price
4 of a prescription drug not included on the maximum allowable cost
5 list.

6 e. The amount paid by a carrier or a carrier's pharmacy benefits
7 manager to a pharmacy provider under contract with the carrier or
8 the carrier's pharmacy benefits manager for dispensing a
9 prescription drug shall be the ingredient cost plus the dispensing fee
10 less any cost-sharing amount paid by a covered person.

11 The ingredient cost shall not exceed the maximum allowable cost
12 or average wholesale price, as applicable, and shall be disclosed by
13 a carrier's pharmacy benefits manager to the carrier.

14 Only the pharmacy provider that dispensed the prescription drug
15 shall retain the payment described in this subsection.

16 (cf: P.L.2015, c. 179, s.3)

17

18 6. (New section) a. Compensation remitted by or on behalf of
19 a pharmaceutical manufacturer, developer or labeler, directly or
20 indirectly, to a carrier or to a pharmacy benefits manager under
21 contract with a carrier related to prescription drug benefits shall be:

22 (1) remitted directly to the covered person at the point of sale to
23 reduce the out-of-pocket cost to the covered person associated with
24 a particular prescription drug; or

25 (2) remitted to, and retained by, the carrier. Compensation
26 remitted to the carrier shall be applied by the carrier in its plan
27 design and in future plan years to offset the premium for covered
28 persons.

29 b. Beginning on March 1 next following the effective date of
30 P.L. , c. (C.) (pending before the Legislature as this bill),
31 and annually thereafter, a carrier shall file with the department a
32 report explaining how the carrier has complied with the provisions
33 of this section. The report shall be written in a manner and form
34 determined by the department.

35

36 7. (New section) a. A carrier, or a pharmacy benefits manager
37 under contract with a carrier, shall establish a pharmacy and
38 therapeutics committee responsible for managing the formulary
39 system.

40 b. A carrier, or a pharmacy benefits manager under contract
41 with a carrier, shall not allow a person with a conflict of interest to
42 be a member of its pharmacy and therapeutics committee. A person
43 shall not serve as a member of a pharmacy and therapeutics
44 committee if the person:

45 (1) is employed, or was employed within the preceding year, by
46 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
47 distributor; or

1 (2) receives compensation, or received compensation within the
2 preceding year, from a pharmaceutical manufacturer, developer,
3 labeler, wholesaler, or distributor.

4
5 8. (New section) a. A carrier shall maintain and have the
6 ability to access all data related to the administration and provision
7 of prescription drug benefits administered by a pharmacy benefits
8 manager under the health benefits plan of the carrier, including, but
9 not limited to:

10 (1) the names, addresses, member identification numbers,
11 protected health information and other personal information of
12 covered persons; and

13 (2) any contracts, documentation, and records, including
14 transaction and pricing data and post point-of-sale information,
15 related to the dispensing of prescription drugs to covered persons
16 under the health benefits plan.

17 b. A sale or transaction involving the transfer of any records,
18 information or data described in subsection a. of this section must
19 comply with the federal Health Insurance Portability and
20 Accountability Act of 1996, Pub. L. No. 104-191, and the federal
21 Health Information Technology for Economic and Clinical Health
22 Act, Pub. L. No. 111-5, and any regulations adopted pursuant to
23 those laws.

24 c. A carrier may audit all transaction records related to the
25 dispensing of prescription drugs to covered persons under a health
26 benefits plan. A carrier may conduct audits at a location of its
27 choosing and with an auditor of its choosing.

28 d. A carrier shall maintain all records, information and data
29 described in subsection a. of this section and all audit records
30 described in subsection c. of this section for a period of no less than
31 five years.

32 e. Upon request, a carrier shall provide to the department any
33 records, contracts, documents or data held by the carrier or the
34 carrier's pharmacy benefits manager for inspection, examination or
35 audit purposes.

36
37 9. (New section) a. If a carrier uses a pharmacy benefits
38 manager to administer or manage the prescription drug benefits of
39 covered persons, any pharmacy benefits manager compensation, for
40 purposes of calculating a carrier's anticipated loss ratio or any loss
41 ratio calculated as part of any applicable medical loss ratio filing or
42 rate filing, shall:

43 (1) constitute an administrative cost incurred by the carrier in
44 connection with a health benefits plan; and

45 (2) not constitute a benefit provided under a health benefits
46 plan. A carrier shall claim only the amounts paid by the pharmacy
47 benefits manager to a pharmacy or pharmacist as an incurred claim.

1 b. Any rate filing submitted by a carrier with respect to a health
2 benefits plan that provides coverage for prescription drugs or
3 pharmacy services, that is administered or managed by a pharmacy
4 benefits manager, shall include:

5 (1) a memorandum prepared by a qualified actuary describing
6 the calculation of the pharmacy benefits manager compensation;
7 and

8 (2) any records and supporting information as the department
9 reasonably determines is necessary to confirm the calculation of the
10 pharmacy benefits manager compensation.

11 c. Upon request, a carrier shall provide any records to the
12 department that relate to the calculation of the pharmacy benefits
13 manager compensation.

14 d. A pharmacy benefits manager shall provide any necessary
15 documentation requested by a carrier that relates to pharmacy
16 benefits manager compensation in order to comply with the
17 requirements of this section.

18

19 10. Section 6 of P.L.2019, c.274 (C.17B:27F-9) is amended to
20 read as follows:

21 6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-
22 1 et seq.) shall apply to all pharmacy benefits managers operating in
23 the State of New Jersey [, except for any]. Requirements imposed
24 on carriers by the provisions of P.L.2015, c.179 (C.17B:27F-
25 1 et seq.) shall not apply to an agreement by a pharmacy benefits
26 manager to administer prescription drug benefits on behalf of the
27 State Health Benefits Plan, the School Employees Health Benefits
28 Plan, the State Medicaid program established pursuant to P.L.1968,
29 c.413 (C.30:4D-1 et seq.), or a self-insured health benefits plan
30 governed by the provisions of the federal "Employee Retirement
31 Income Security Act of 1974," 29 U.S.C., ss.1001 et seq.

32 (cf: P.L.2019, c.274, s.6)

33

34 11. This act shall take effect on the first day of the seventh
35 month next following the date of enactment, but the Commissioner
36 of the Banking and Insurance may take such anticipatory
37 administrative action in advance thereof as shall be necessary for
38 the implementation of the act.

39

40

41

STATEMENT

42

43 This bill sets new transparency standards for pharmacy benefits
44 manager (PBM) business practices. Specifically, the bill concerns
45 the licensing and reporting requirements of a carrier or a PBM. The
46 bill requires that PBMs apply for a license with the Department of
47 Banking and Insurance every three years and requires carriers to
48 ensure that a PBM under contract with the carrier owes a fiduciary

S1616 VITALE, SINGLETON

11

1 duty to the carrier. Carriers are to maintain detailed records of
2 transactions and submit annual documentation showing that any
3 compensation remitted by a manufacturer, developer, or labeler to a
4 carrier or PBM was either remitted directly to the covered person at
5 the point of sale to reduce out of pocket expenses or used to offset
6 premium costs for future plan years. Additionally, the bill mandates
7 that carriers and PBMs establish pharmacy and therapeutics
8 committees that are free from conflicts of interest and use one or
9 more formularies. For the purposes of calculating a carrier's
10 anticipated loss ratio, PBM compensation constitutes an
11 administrative cost rather than a benefit.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1616

STATE OF NEW JERSEY

DATED: MAY 11, 2023

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1616.

This bill sets new transparency standards for pharmacy benefits manager (PBM) business practices. Specifically, the bill concerns the licensing and reporting requirements of a carrier or a PBM. The bill requires that PBMs apply for a license with the Department of Banking and Insurance every three years and requires carriers to ensure that a PBM under contract with the carrier owes a fiduciary duty to the carrier. Carriers are to maintain detailed records of transactions and submit annual documentation showing that any compensation remitted by a manufacturer, developer, or labeler to a carrier or PBM was either remitted directly to the covered person at the point of sale to reduce out of pocket expenses or used to offset premium costs for future plan years. Additionally, the bill mandates that carriers and PBMs establish pharmacy and therapeutics committees that are free from conflicts of interest and use one or more formularies. For the purposes of calculating a carrier's anticipated loss ratio, PBM compensation constitutes an administrative cost rather than a benefit.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.

STATEMENT TO
SENATE, No. 1616

with Senate Floor Amendments
(Proposed by Senator VITALE)

ADOPTED: JUNE 26, 2023

These floor amendments:

(1) stipulate that pharmacy benefits managers are to be licensed with the Department of Banking and Insurance (department) while pharmacy services administrative organizations are to be registered with the department and require the department to establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager;

(2) revise certain definitions within the bill;

(3) require the department to suspend, revoke, or place on probation a licensee or registered entity under the bill if a pharmacy benefits manager (PBM) or pharmacy services administrative organization (PSAO) engages in any activity that constitutes a violation of State or federal law;

(4) include requirements providing that:

(a) PBMs have a duty of good faith and fair dealing in the performance of all of its contractual duties; and

(b) PBMs owe the same duty to a covered person as a health benefits plan or carrier;

(5) replace the requirement that a PBM maintain a “reasonable administrative procedure” with an internal appeal mechanism and independent arbitration;

(6) replace pharmacy and therapeutics committee conflict of interest standards with those set by the Center for Medicare and Medicaid Services, the Nation Committee for Quality Assurance, or another independent accrediting organization;

(7) require applicants for licensure or registration to provide, upon the department’s request, any contracts and documents between pharmacies, pharmacy benefits managers, and pharmacy services administrative organizations;

(8) stipulate that pharmacy services administrative organizations are not subject to certain requirements applicable to pharmacy benefits managers under the bill;

(9) revise civil penalties for persons who willfully disclose certain confidential information;

(10) increase the penalties pharmacy benefits managers are subject to for violations, and provide that pharmacy benefits managers may be required to make restitution and pay compensatory damages by the commissioner;

(11) provide that records, contracts, documents, or data submitted to the department by a carrier or a pharmacy benefits manager are to be kept confidential and protected from public disclosure;

(12) require the Drug Affordability Council to examine certain information concerning the prescription drug rebate system; and

(13) extend the effective date of the bill from the first day of the seventh month to the first day of the 18th month following the date of enactment, and provide that the bill applies to contracts and agreements entered into, renewed, modified, or amended on or after the effective date.

Governor Murphy Signs Legislative Package to Make Prescription Drugs More Affordable for New Jerseyans

07/10/2023

WEST ORANGE – As part of the Murphy Administration's ongoing efforts to advance health care affordability on behalf of the residents of our state, Governor Phil Murphy today signed three bills he announced in partnership with legislative sponsors last year to help make prescription drugs more affordable for New Jerseyans. The three bills, which were signed alongside legislators and advocates, will work together to cap certain out-of-pocket costs, establish greater oversight of Pharmacy Benefit Managers, and promote transparency at the pharmaceutical supply chain.

"This is a huge step forward in our ongoing efforts to deliver much-needed relief to countless families throughout our state who are struggling to afford critical medications," said **Governor Murphy**. "I am proud to sign nation-leading legislation that will make a real difference in the lives of New Jerseyans as we continue to work towards making prescription and other health care services more affordable and accessible to everyone."

Today's bill package advances one of the most comprehensive prescription drug price transparency programs in the country to date. The legislation also makes New Jersey only the second state in the nation to cap out of pocket costs for asthma inhalers and EpiPens in addition to capping consumer costs for insulin.

The three bills the Governor signed today are:

- [S-1614](#) – **Caps out-of-pocket costs for many residents** by extending Medicare's new \$35/month insulin out of pocket cap to state-regulated markets and NJ public employee plans, as well as capping out of pocket costs for EpiPens and asthma inhalers at \$25 and \$50 respectively for a month's supply.
- [S-1615](#) – **Creates a new data and transparency system** within the Division of Consumer Affairs to collect, analyze, and report on the entire process of drug pricing across the supply chain in an effort to gain greater insight into drugs with high price increases and launch prices. The bill also establishes a Drug Affordability Council to formulate legislative and regulatory policy recommendations that help advance the goal of prescription drug affordability and accessibility.
- [A-536/2841](#) – **Establishes greater oversight of Pharmacy Benefit Managers (PBMs)**, the third-party companies who manage many prescription-drug plans, to prevent certain practices that drive up costs. This bill requires rebates to be used to lower premiums and out-of-pocket costs for consumers and prevents the practice of spread pricing (where PBM pockets the difference between what it charges a health plan and reimburses a pharmacy). It also requires PBMs to apply for a license from the NJ Department of Banking and Insurance to strengthen regulatory oversight.

With more than [half](#) of New Jersey residents concerned about the affordability of prescription drugs and one in four adults skipping or rationing their medications – an issue seen throughout the nation – the Office of Health Care Affordability and Transparency worked closely with legislative partners and other community stakeholders to advance this legislation for prescription drug affordability. Governor Murphy launched this office in 2020 to lead efforts across the Administration to make health care more affordable for residents and address the unsustainable rise in health care costs.

To further advance prescription affordability, the Governor also included funding in the Fiscal Year 2024 budget to expand eligibility for the Pharmaceutical Assistance for the Aged and Disabled (PAAD) program, which further cuts the costs of life-enhancing and life-saving prescription drugs for seniors and residents with disabilities. A companion bill signed on the same day as the budget, in addition to authorizing the eligibility expansion, will help get even more eligible New Jerseyans enrolled in both PAAD and the Senior Gold Prescription Discount program going forward.

The following legislators sponsored one or more of the three bills signed today – Senators Joseph Vitale and Troy Singleton and Assemblyman John McKeon, in addition to Senators Nellie Pou, Linda Greenstein, and Vin Gopal and Assembly Members Roy Freiman, Angela McKnight, Robert Karabinchak, Bill Moen, Gabriela Mosquera, Annette Quijano, Paul Mori, Joseph Danielsen, Daniel Benson, and Verlina Reynolds-Jackson.

"Far too many New Jerseyans have experienced the stress of affording the price of a medication, often cutting back on groceries, putting off bills, and even rationing or skipping doses. And unfortunately, prescription drug costs are just one factor pushing health care out of reach for many residents," said **Shabnam Salih, Director of the Governor's Office of Health Affordability and Transparency**. "My Office is working to lower costs across the health care system through a comprehensive affordability agenda. This package is a critical part of our work and a huge step forward that will have a real impact on New Jersey residents. It would not have been possible without the Governor's leadership and the commitment of our partners throughout the Administration, in the Legislature, and in the community."

"These reforms help to address the burdensome high cost of prescription drugs that consumers face across our state," said **New Jersey Department of Banking and Insurance ACE Commissioner Justin Zimmerman**. "Through greater oversight and increased transparency of the factors that contribute to prescription drug pricing, the state can take meaningful steps to reduce patient costs. Additionally, the department will now require Pharmacy Benefits Managers to meet stringent standards for licensure to prevent practices that can drive up prescription drug costs. The enactment of these measures demonstrates Governor Murphy's commitment to improving access to and affordability of health care for New Jersey residents."

"The high cost of prescription medication jeopardizes the health and well-being of the most vulnerable among us: low-income families, the elderly, the uninsured, and people with disabilities," said **Attorney General Matthew J. Platkin**. "I applaud Governor Murphy and the Legislature for taking these important first steps toward reigning in the rising cost of prescription drugs in our state."

"The Division of Consumer Affairs is dedicated to ensuring fairness and transparency in the market and we welcome the opportunity to shine a light on the high cost of prescription drugs," said **Cari Fais, Acting Director of the Division of Consumer Affairs**. "Creating a system to collect, analyze, and report data on the entire process of drug pricing across the supply chain is critical to gaining greater insight and promoting accountability in the drug industry. New Jersey consumers deserve nothing less."

"Across the nation, too many people are being forced to ration or go without critically needed and potentially life-saving prescription medications. I'm proud that in New Jersey we are working to make the prescription drug industry more transparent," said **Assembly Speaker Craig J. Coughlin**. "The legislation being signed into law today will help us better understand how medications are priced, giving us the data necessary to respond and promote increased access to appropriate care as well as improve oversight and transparency of the entire pharmaceutical supply chain."

"New Jersey's affordability crisis affects all of us – most especially those who rely on prescription drugs to live. Now more than ever, we must work to make life-saving medicine more accessible and affordable," said **Senator Singleton**. "This package will address affordability and stimulate transparency and accountability within the pharmaceutical industry. Each day, someone skips a dose or cuts a pill in half just to save money. In the richest nation in the world, and one of the wealthiest states in America, this is unacceptable and simply unconscionable."

"For far too long, consumers have been excluded from the drug pricing process and left to bear the brunt of prescription cost increases. This package will bring to light the inner workings and beneficiaries within the pharmaceutical industry and work to combat rising prices," said **Senator Vitale, Chair of the Senate Health Committee**. "Inflated prescription prices without reasoning or accountability is unfair and irresponsible; these laws will ensure that pharmaceutical companies and manufacturers are open and honest with the consumers they serve."

"Many consumers have struggled to afford necessary medicine," said **Assemblyman McKeon**. "The legislation being signed into law will help us understand what's behind the rise in drug prices and allow us to develop policies focused on affordability, while keeping those in the industry accountable for their actions."

"Access to prescription medications can dramatically improve one's quality of life, and in some cases they are difference between life and death," said **Assemblyman Freiman**. "The new laws will help make prescription drugs more affordable and accessible for all New Jersey families. We must fight for the future health of our communities. Nobody should have to go without the medication they need to survive."

"Currently, we are facing a severe affordability crisis throughout the nation, and the stunning increase in prescription drug prices continues to play a huge role. Consumers are kept in the dark about these price increases, which is neglectful of the impact these increases have on residents," said **Senator Pou**. "These laws will help to keep consumers prepared and informed while holding pharmaceutical companies and manufacturers accountable."

As prescription drug prices continue to skyrocket, approximately 30 million Americans are diagnosed with diabetes and are subjected to pay three times what people living overseas would pay for the same drug," said **Senator Greenstein**. "This law is a major step forward in our efforts to mitigate the current drug affordability crisis, and will make insulin, asthma inhalers, and other critical treatments affordable for New Jersey residents."

"Too many residents are forced to delay or all together forego taking a prescription due to the cost," said **Senator Gopal**. "This legislation will regulate the behind-the-scenes business practices of pharmacy benefits managers to be more transparent, require licenses, data and records reporting, and cost establishment modifications to help address the prescription drug affordability crisis facing our state."

"AARP commends Governor Murphy and the NJ Legislature for enacting legislation today that will meaningfully respond to the skyrocketing costs of prescription medications," said **Crystal McDonald, AARP New Jersey Associate State Director of Advocacy**. "High prescription drug prices hit older Americans particularly hard. More than two out of three NJ voters are concerned they won't be able to afford the medicines they need in the future. S1615 will give our State the data and tools to ensure transparency across the pharmaceutical supply chain and establish a Drug Affordability Council - responsible for actionable recommendations to lower drug costs. S1614 will cap the out-of-pocket-costs on insulin, asthma inhalers, and epi-pens for many insured New Jerseyans - keeping these life-saving drugs within financial reach of so many. We applaud Governor Murphy, Senator Singleton, Senator Vitale and Assemblyman McKeon for championing this legislation."

"It's been a long road, but we finally have a law that puts us on the path of making prescription drugs more affordable for New Jerseyans," said **New Jersey Citizen Action HealthCare Program Director Laura Waddell**. "A Drug Affordability Council will help rein in prices at the pharmacy counter and ensure patients don't have to choose between paying for lifesaving medicines or for other essential needs. We thank Senator Singleton and Assemblyman McKeon for tirelessly championing this legislation, and applaud Governor Murphy and all our elected leaders who supported meaningful drug pricing reform. We also thank all our New Jersey for Affordable Drugs campaign partners and the countless grassroots advocates activists whose work made this day possible. NJCA looks forward to continue working with both Governor Murphy and our Legislature throughout implementation."

"GSPO is proud to have supported this critically-needed package of bills. Many of the new laws' provisions are unparalleled and incredibly forward-thinking," said **Executive Director Garden State Pharmacy Owners Brian Oliveira, PharmD**. "The leadership demonstrated by the sponsors, co-sponsors, and Governor Murphy's Office will assuredly benefit New Jersey patients and providers. We look forward to working closely with the Administration on implementation of the laws."

"I am pleased to extend the New Jersey Pharmacists Association's (NJPhA) sincere thanks to Governor Murphy, the bill sponsors, and co-sponsors for their hard work in bringing this extensive prescription drug transparency package to fruition," said **Rupal Mansukhani, Pharm.D - NJPhA President**. "It will assist New Jersey pharmacies and pharmacists in providing the highest level of care to patients. These new laws are forward thinking with innovative provisions that protect patients, providers, and plan sponsors."

"The American Diabetes Association celebrates New Jersey's passage of critical legislation aimed at lessening the financial burden of insulin costs for people living with diabetes," said **Monica Billger, State Government Affairs Director for the American Diabetes Association**. "While Congress passed a \$35 cap for Medicare recipients last year, an affordability gap remained for many others with diabetes. New Jersey, along with 24 other states and the District of Columbia, are taking the lead to close the gap and improve affordability and access to life-saving insulin."

"I applaud Gov. Murphy's actions to lower the cost of prescription drugs for patients. The out-of-pocket caps on insulin, epi pens, and asthma inhalers will dramatically lower cost barriers to life-saving drugs for many families who depend on them," said **Center for American Progress' Senior Vice President of Inclusive Growth, Emily Gee**. "The state's new measures to tighten oversight of pharmacy benefit managers (PBM) and shed light on pricing throughout the drug supply chain are crucial for improving competition and reducing costs for New Jersey residents."

"Drug prices are outrageously high, and Americans are demanding action. Today, Governor Murphy is taking important steps to meet that demand by working to protect patients," said **Alex Lawson, Executive Director of Social Security Works**. "These actions should be a model for governors across the country, as well as federal policymakers."

"Nurses for America applauds Governor Murphy's progressive and innovative package of bills to advance drug affordability and access in New Jersey," said **Sherry Pomeroy PhD, Faith Community Nurse**. "As nurses we care for individuals, families & communities across the lifespan who struggle to afford medications critical to their overall health & well-being such as insulin, asthma inhalers, and epinephrine pens. The ability to obtain and afford medications needed to treat a wide variety of health conditions is a basic health care right."

"We have known for years that insulins suffer from some of the greatest disconnects between the list prices and the real prices of those medicines, with much of the fluffed up cost paid by patients and employers being cannibalized by intermediaries within the drug channel," said **Antonio Ciaccia, CEO, 46brooklyn Research**. "Within drug classes where these price distortions are most pronounced, it is a good thing for patients that they won't have to continue to overpay for medicines in order to generate discounts that are pocketed by others."

"PBMs are supposed to be working on behalf of patients and plan sponsors to make prescription drugs more affordable," continued **Ciaccia**. "However, due to a lack of transparency and significant conflicts of interest, PBMs often make our dysfunctional drug pricing system even worse. A 536/2841 is on the leading edge of these state PBM reforms, with a number of innovative approaches that attempt to curtail anti-competitive behavior and drug price manipulation. This seems like a very worthwhile effort to provide greater oversight and accountability to an important aspect of our healthcare delivery system."

"You shouldn't have to choose between paying the rent or getting a prescription filled - yet for many people, this is a reality," shared **Mona Shah, Senior Director of Policy and Strategy at Community Catalyst**. "Important policy changes are necessary to create a more equitable health system, and we applaud Governor Murphy as well as our partners at NJ Citizen Action for their meaningful work to make prescription drugs more affordable. This will give people, families, and communities the relief so clearly needed. At Community Catalyst, we won't stop fighting until everyone has what they need to be healthy, and health is a right for all."

STATEMENT TO
SENATE, No. 1616

with Senate Floor Amendments
(Proposed by Senator VITALE)

ADOPTED: JUNE 26, 2023

These floor amendments:

(1) stipulate that pharmacy benefits managers are to be licensed with the Department of Banking and Insurance (department) while pharmacy services administrative organizations are to be registered with the department and require the department to establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager;

(2) revise certain definitions within the bill;

(3) require the department to suspend, revoke, or place on probation a licensee or registered entity under the bill if a pharmacy benefits manager (PBM) or pharmacy services administrative organization (PSAO) engages in any activity that constitutes a violation of State or federal law;

(4) include requirements providing that:

(a) PBMs have a duty of good faith and fair dealing in the performance of all of its contractual duties; and

(b) PBMs owe the same duty to a covered person as a health benefits plan or carrier;

(5) replace the requirement that a PBM maintain a “reasonable administrative procedure” with an internal appeal mechanism and independent arbitration;

(6) replace pharmacy and therapeutics committee conflict of interest standards with those set by the Center for Medicare and Medicaid Services, the Nation Committee for Quality Assurance, or another independent accrediting organization;

(7) require applicants for licensure or registration to provide, upon the department’s request, any contracts and documents between pharmacies, pharmacy benefits managers, and pharmacy services administrative organizations;

(8) stipulate that pharmacy services administrative organizations are not subject to certain requirements applicable to pharmacy benefits managers under the bill;

(9) revise civil penalties for persons who willfully disclose certain confidential information;

(10) increase the penalties pharmacy benefits managers are subject to for violations, and provide that pharmacy benefits managers may be required to make restitution and pay compensatory damages by the commissioner;

(11) provide that records, contracts, documents, or data submitted to the department by a carrier or a pharmacy benefits manager are to be kept confidential and protected from public disclosure;

(12) require the Drug Affordability Council to examine certain information concerning the prescription drug rebate system; and

(13) extend the effective date of the bill from the first day of the seventh month to the first day of the 18th month following the date of enactment, and provide that the bill applies to contracts and agreements entered into, renewed, modified, or amended on or after the effective date.